TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No. 705

THE UNITED STATES, PETITIONER

vs.

EMMETT F. DICKERSON

ON WRIT OF CERTIORARI TO THE COURT OF CLAIMS

PETITION FOR CERTIORARI FILED FEBRUARY 6, 1940

CERTIORARI GRANTED MARCH 25, 1940

SUPREME COURT OF THE UNITED STATES

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IN COURT OF CLAIMS

No. 44263

EMMETT F. DICKERSON

v.

THE UNITED STATES

I. *Petition*

Filed November 19, 1938

To the Honorable the Court of Claims:

The plaintiff, Emmett F. Dickerson, respectfully represents:

I. He is a private in the United States Army, now stationed at Washington, D. C.

II. He has performed duty as an enlisted man in the Army under several contracts of enlistment. His last completed enlistment period was for a term of three years and expired on July 21, 1938, at which time he was honorably discharged from the Army as a private. On July 22, 1938, he reenlisted in the United States Army as a private, and is now performing duty under his present reenlistment.

III. At the time he was last discharged he was receiving the pay of the sixth grade for enlisted men as defined by the Act of June 10, 1922, 42 Stat. 629. This statute with respect to reenlistment allowance provides:

2 "On and after July 1, 1922, an enlistment allowance equal to $50, multiplied by the number of years served in the enlistment period from which he has last been discharged, shall be paid to every honorably discharged enlisted man of the first three grades who reenlists within a period of three months from the date of his discharge, and an enlistment allowance of $25, multiplied by the number of years served in the enlistment period from which he has last been discharged, shall be paid to every honorably discharged enlisted man of the other grades who reenlists within a period of three months from the date of his discharge."

IV. The foregoing statute, which is a part of the permanent pay legislation of the Army, and the right to the reenlistment allowance extended under it were in full force and effect at the

time of plaintiff's reenlistment. By reason of his honorable discharge on July 21, 1938, and his reenlistment within three months therefrom, or on July 22, 1938, he became entitled to the reenlistment allowance of $75.00 provided for in said statute.

V. Congress appropriated no money for the payment of reenlistment allowances during the fiscal year ending June 30, 1939, as a result of which plaintiff has not been paid the reenlistment allowance for his reenlistment of July 22, 1938.

VI. Plaintiff therefore claims the sum of $75.00.

VII. No other action has been had on said claim in Congress or by any of the departments; no person other than the plaintiff is the owner thereof or interested therein; no assignment or transfer of this claim, or of any part thereof or interest therein, has been made; the plaintiff is justly entitled to the amount herein claimed from the United States, after allowing all just credits and offsets; the plaintiff has at all times borne true allegiance to the Government of the United States and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government. The plaintiff is a citizen of the United States. And the plaintiff claims the sum of $75.00.

3

KING & KING,
Attorneys for Plaintiff.

Duly sworn to by John W. Gaskins; jurat omitted in printing.

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II. *General traverse.*

Filed December 29, 1938

And now comes the Attorney General, on behalf of the United States, and answering the petition of the claimant herein, denies each and every allegation therein contained; and asks judgment that the petition be dismissed.

SAM E. WHITAKER,
Assistant Attorney General.

III. *Argument and submission of case.*

On May 29, 1939, the case was argued and submitted on merits by Mr. Herman J. Galloway for plaintiff, and by Miss Stella Akin for defendant.

5 IV. *Special findings of fact, conclusion of law and opinion of the court by Williams, J.*

Filed November 6, 1939

Mr. Herman J. Galloway for the plaintiff. Messrs. King & King were on the brief.

Miss Stella Akin, with whom was the Assistant Attorney General, for the defendant.

The court, upon the report of a commissioner and the evidence, makes the following

Special findings of fact

1. Plaintiff served in the United States Army as a private or a noncommissioned officer during the following periods: August 16, 1917, to July 6, 1919; July 7, 1919, to July 6, 1920; July 7, 1920, to July 6, 1923; July 7, 1923, to July 8, 1926; July 14, 1926, to July 19, 1929; July 20, 1929, to July 21, 1932; July 22, 1932, to July 21, 1935, and July 22, 1935, to July 21, 1938. He was honorably discharged from each of the above enlistments. On July 22, 1938, plaintiff reenlisted to serve three years and is now serving under that reenlistment as a private, detached enlisted men's list, Headquarters Company, stationed at Washington, D. C.

2. When plaintiff last reenlisted on July 22, 1938, he was not paid a reenlistment allowance, although he had reenlisted within three months from the date upon which he had been honorably discharged from the preceding three-year term of enlistment.

3. If entitled to the reenlistment allowance for his reenlistment of July 22, 1938, there is due plaintiff the sum of $75.

6 *Conclusion of law*

Upon the foregoing special findings of fact, which are made a part of the judgment herein, the court decides as a conclusion of law that the plaintiff is entitled to recover $75.00.

It is therefore ordered and adjudged that the plaintiff recover of and from the United States the sum of seventy-five dollars ($75.00).

Opinion

Williams, Judge, delivered the opinion of the court:

Plaintiff is a private in the United States Army where he has served as an enlisted man for a period of more than 20 years. On July 21, 1938, he was honorably discharged from a three-

year term of enlistment, and on July 22, 1938, reenlisted for a period of three years in the grade of private.

Section 9 of the basic pay act of June 10, 1922, 42 Stat. 625, 629; U. S. C. Title 10, Sec. 633, provides:

"On and after July 1, 1922, an enlistment allowance equal to $50, multiplied by the number of years served in the enlistment period from which he has last been discharged, shall be paid to every honorably discharged enlisted man of the first three grades who reenlists within a period of three months from the date of his discharge, and an enlistment allowance of $25, multiplied by the number of years served in the enlistment period from which he has last been discharged, shall be paid to every honorably discharged enlisted man of the other grades who reenlists within a period of three months from the date of his discharge."

By virtue of this provision of law plaintiff upon his reenlistment on July 22, 1938, became entitled to receive as a reenlistment allowance the sum of $75. He has not been paid this reenlistment allowance and is entitled to recover that amount in this suit if this statute was in effect at the time of his reenlistment.

The act of August 4, 1854, section 2, 10 Stat. 575, provided a reenlistment allowance for enlisted men of the Army who reenlisted within one month after an honorable discharge from
7 a previous enlistment. Subsequent acts of Congress, prior to the act of June 10, 1922, continued the payment of this reenlistment allowance in various forms. Following the passage of the act of June 10, 1922, all men reenlisting in the Army within three months from the date of their honorable discharge from preceding enlistments were paid reenlistment allowances provided in that act until after July 1, 1933, upon which date such payments were suspended under the provisions of section 18 of the act of March 3, 1933, Treasury-Post Office Department Appropriation Act, 47 Stat. 1489, 1519, which reads:

"Sec. 18. So much of sections 9 and 10 of the Act entitled 'An Act to readjust the pay and allowances of the commissioned and enlisted personnel of the Army, Navy, Marine Corps, Coast Guard, Coast and Geodetic Survey, and Public Health Service,' approved June 10, 1922 (U. S. C. Title 37, secs. 13 and 16), as provides for the payment of enlistment allowance to enlisted men for reenlistment within a period of three months from date of discharge is hereby suspended as to reenlistments made during the fiscal year ending June 30, 1934."

Section 24 of the Act of March 28, 1934, 48 Stat. 509, 523, continued in the same language the suspension for the fiscal year 1935.

The suspension was further continued in the same language for the fiscal year 1936 by the Act of May 14, 1935, the Treasury-Post Office Department Appropriation Act, 49 Stat. 218, 226.

The suspension was last invoked for the fiscal year 1937 by the Treasury-Post Office Department Appropriation Act of June 23, 1936, 49 Stat. 1827, 1837, which employed the same language.

Manifestly these acts of Congress suspending the operations of section 9 of the basic pay act of June 10, 1922, for the fiscal years, 1933–37, did not operate as a repeal of that Act and was not intended by Congress to do so. The basic act remained unchanged and without modification as it had always stood.

For the fiscal years 1938 and 1939, Congress did not continue the suspension of the provisions of the 1922 act in respect to the payment of the reenlistment allowance involved but made unavailable for the payment of such allowance all appropriations enacted for these years. For the fiscal year 1939 it was provided in section 402 of Public Resolution No. 122, approved June 21, 1938, 52 Stat. 809, 818, that:

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"* * * no part of any appropriation contained in this or any other Act for the fiscal year ending June 30, 1939, shall be available for the payment of enlistment allowance to enlisted men for reenlistment within a period of three months from date of discharge as to reenlistments made during the fiscal year ending June 30, 1939, notwithstanding the applicable provisions of sections 9 and 10 of the Act entitled 'An Act to readjust the pay and allowances of the commissioned and enlisted personnel of the Army, Navy, Marine Corps, Coast Guard, Coast and Geodetic Survey, and Public Health Service,' approved June 10, 1922 (37 U. S. C. 13, 16)."

Similar provision was made in the act of May 28, 1937, 50 Stat. 213, 232, in respect to the fiscal year 1938.

The defendant contends that it was the intention of Congress to suspend the operation of the permanent law for the payment of the enlistment allowances for the fiscal years ending June 30, 1938, and June 30, 1939, and says in the brief that "the later two Acts were so clear as to be express legislation against the payment of reenlistment allowances."

We cannot agree with the defendant in this contention. The language found in these provisos contains no reference to the suspension of the basic statute. Congress in dealing with this question for the fiscal years preceding 1938 had specifically and in plain terms stated that the provision in the basic pay act for an allowance for reenlistment during those years was suspended. It must be assumed that had Congress intended to continue such suspension for the fiscal years 1938 and 1939 it would have em-

ployed the same language, or language equally plain and unequivocal. The deliberate selection of language so different from that used in the preceding Acts indicates that a change of law was intended and gives rise to a definite presumption that it was the intention of Congress to change from and not to continue the suspension which had previously existed for the preceding years. United States v. Fisher, 2 Cranch 358, 1 Dallas 421; Pirie v. Chicago Title and Trust Co., 182 U. S. 438; Crawford v. Burke, 195 U. S. 176; Brewster v. Gage, 280 U. S. 327.

Following the enactment of the statute of June 10, 1922, Congress in the various appropriation acts for subsequent years made no appropriation in a designated amount for the payment of the reenlistment allowance. However, the funds appropriated for the "Pay, and so forth, of the Army" in respective appropriation acts were regarded as available for such payment and prior to June 30, 1933, payment had regularly been made out of such appropriations without question. The act of June 10, 1922, is a part of the permanent pay legislation of the Army. This Act, being neither suspended for the fiscal year 1939 nor modified in any way, was in full force and effect at the time of plaintiff's reenlistment. Plaintiff's legal right to the reenlistment allowance therefore accrued to him upon the date of his reenlistment. His failure to receive the allowance has arisen solely from the proviso which limits the availability of funds appropriated for that fiscal year from which the allowance could have been paid. While this restriction clearly constitutes a prohibition on the administrative officers of the Government to use any of the funds so appropriated, such limitation does not affect his basic right to the allowance which is founded upon permanent legislation.

In Geddes v. United States, 38 C. Cls. 428, the question arose as to the effect to be given to a limitation on an appropriation carried in the act of March 3, 1885, 23 Stat. 353, 356, which provided:

"That no part of the money herein or hereafter appropriated for the Department of Agriculture shall be paid to any person, as additional salary or compensation, receiving at the same time other compensation as an officer or employee of the Government."

The court, holding that plaintiff was entitled to recover, notwithstanding this limitation, said:

"The statutory provision is a proviso to an appropriation, and its plain purpose is that no person in the Department of Agriculture, or out of the Department of Agriculture, who is receiving compensation as an officer or employee of the Government shall be paid additional compensation for

additional service out of general funds appropriated for the Department of Agriculture. Applying to no designated class of persons, it is a provision of law controlling appropriations for the Department by limiting the discretionary authority of the Secretary. The evil against which it is directed is the practice of allowing additional compensation for additional service in that Department.

"That limitation upon the power of the Secretary does not constitute a defense. An appropriation is the setting aside by Congress of a designated amount of public money for a designated purpose.

"'No money shall be drawn from the Treasury but in consequence of appropriations made by law.'" (Const. Art. 1, sec. 9.)

"The accounting officers are the guardians of the appropriations. It is their business to see that no money is paid out of the Treasury unless the payment is authorized by an appropriation act. It is not their business to adjudicate abstract questions of legal right beyond the legal right of a person to be paid out of a specific appropriation. An appropriation constitutes the means for discharging the legal debts of the Government.

"The judgment of a court has nothing to do with the means—with the remedy for satisfying a judgment. It is the business of courts to render judgments, leaving to Congress and the executive officers the duty of satisfying them. Neither is a public officer's right to his legal salary dependent upon an appropriation to pay it. Whether it is to be paid out of one appropriation or out of another; whether Congress appropriate an insufficient amount, or a sufficient amount, or nothing at all, are questions which are vital for the accounting officers, but which do not enter into the consideration of a case in the courts. This has been repeatedly held by the Supreme Court and this court, beginning with Graham's Case, in the first volume of the Reports (1 C. Cls. R. 380). The appropriations made for all the Executive Departments, except that of the Department of Agriculture, are specific—so much for this object, so much for that. But it has been the legislative practice for some years to appropriate gross amounts for the Department of Agriculture, and at the same time to append the above limitation upon the power of the Secretary.

The judgment of this court will not be paid out of that
11 appropriation; the limitation upon the power of the Secretary does not extend to the court; the real question before the court is that of the claimant's legal right to receive the pay of both offices, irrespective of the statutes above quoted."

In Erwin v. United States, 37 Fed. 470 (S. D. Ga. 1889), a clerk of the court brought suit for his per diem allowance under Sec. 828, Revised Statutes, which provided that he should receive

$5.00 a day for his attendance on the court while actually in session. The appropriation act of August 4, 1886, 24 Stat. 253, contained the following provision:

"Nor shall any part of the money appropriated by this act be used in the payment of a per diem compensation to any clerk or marshal for attendance in court except for days when business is actually transacted in court, and when they attend under sections 583, 584, 671, 672, and 2013 of the Revised Statutes."

The Court, holding that the limitation contained in the appropriation act was a limitation upon the appropriation only, and not a suspension, repeal or modification of the basic law, said (p. 478):

"Under the provisions of the fee-bill (section 828, Rev. St.), the clerk was entitled to a per diem for his attendance on the court when actually in session even though 'no suitors appeared, or for other reason the court, in its discretion, adjourned to a future day.' Jones v. U. S., 21 Ct. Cl. 1; Bill v. U. S. (Ct. Cl. No. 15570). (23 Ct. Cl. 142.) Goodrich v. U. S., 35 Fed. Rep. 193. The limitation in the act of August 4, 1886, was expressly confined to the money appropriated by that act, and did not therefore repeal the general statute giving the clerk the right to his per diem for his attendance for each day when the court is actually in session."

This provision in the appropriation act of August 4, 1886, was also construed by the Circuit Court of Appeals (First Circuit), United States v. Aldrich, 58 Fed. 688, 689, where the ruling in Erwin v. United States, supra, was reannounced.

It is well established that recovery may be had where Congress has failed to appropriate all the amount provided as compensation for an officer under the basic law, and also where
12 there was a failure to appropriate any money for pay provided for in earlier permanent legislation. United States v. Langston, 118 U. S. 389; Bell v. United States, 35 Fed 889; United States v. Vulte, 233 U. S. 509; Archbald v. United States, 218 Fed. 270; Graham v. United States, 1 C. Cls. 380; Collins v. United States, 15 C. Cls. 22; Strong v. United States, 60 C. Cls. 627; Elmer E. Miller, 86 C. Cls. 609, 613. While these cases are not directly in point on the question presented in this case the principle is the same.

Plaintiff is entitled to recover. The contention that the provision of the basic pay act of June 10, 1922, was suspended for the fiscal year 1939, insofar as it related to the pay of the reenlistment allowance, cannot be sustained. That Act had not been repealed or modified in any respect and was in full force and effect during the fiscal year. The restriction placed by Congress upon the use of appropriations made for the fiscal year for pay-

ment of such reenlistment allowances has been uniformly construed to affect only sums appropriated and otherwise available. Such limitation was binding on the administrative officers of the Government but in no way suspended or repealed the basic right of reenlisted men to the allowance.

It is ordered that judgment against the United States in favor of the plaintiff he awarded in the sum of $75.00.

LITTLETON, Judge; GREEN, Judge; and WHALEY, Chief Justice, concur.

WHITTAKER, Judge, took no part in the decision of this case.

13 V. *Judgment*

At a Court of Claims held in the City of Washington on the 6th day of November, A. D., 1939, judgment was ordered to be entered as follows:

Upon the special findings of fact, which are made a part of the judgment herein, the court decides as a conclusion of law that the plaintiff is entitled to recover.

It is therefore adjudged and ordered that the plaintiff recover of and from the United States the sum of seventy-five dollars ($75.00).

14 [Clerk's Certificate to foregoing transcript omitted in printing.]

[Endorsement on cover:] File No. 44112. Court of Claims. Term No. 705. The United States, Petitioner vs. Emmett F. Dickerson. Petition for a writ of certiorari and exhibit thereto. Filed February 6, 1940. Term No. 705 O. T. 1939.

U. S. GOVERNMENT PRINTING OFFICE: 1940

Supreme Court of the United States

Order allowing certiorari

Filed March 25, 1940

The petition herein for a writ of certiorari to the Court of Claims is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

U. S. GOVERNMENT PRINTING OFFICE 1940

No. 705

In the Supreme Court of the United States

OCTOBER TERM, 1939

THE UNITED STATES OF AMERICA, PETITIONER

v.

EMMETT F. DICKERSON

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS

INDEX

CITATIONS

Cases:

Statutes: [1]

[1] Other statutes are cited in Appendix B, but are not referred to in the text of this petition and are, therefore, not included in this index.

In the Supreme Court of the United States

OCTOBER TERM, 1939

No. ——

THE UNITED STATES OF AMERICA, PETITIONER

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EMMETT F. DICKERSON

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS

The Solicitor General, on behalf of the United States, prays that a writ of certiorari issue to review the judgment of the Court of Claims in the above case.

OPINION BELOW

The opinion of the Court of Claims is not yet officially reported.

JURISDICTION

The judgment of the Court of Claims was entered November 6, 1939. The jurisdiction of this Court is invoked under Section 3 (b) of the Act of February 13, 1925, as amended.

QUESTION PRESENTED

Whether Section 402 of Public Resolution No. 122 of June 21, 1938, *infra*, p. 15, suspends the re-

enlistment allowance otherwise payable under Section 9 of the Act of June 10, 1922, *infra*, p. 14, to men reenlisting in the military forces of the United States during the fiscal year ending June 30, 1939.

STATUTES INVOLVED

The applicable portions of the statutes involved are set forth in Appendix A, *infra*, pp. 14–16.

STATEMENT

The respondent has served in the United States Army as a private or a noncommissioned officer with substantial continuity since August, 1917 (Fdg. 1). He was honorably discharged upon the expiration of each of his enlistments, his last discharge being from an enlistment terminating on July 21, 1938 (Fdg. 1). On July 22, 1938, he reenlisted for another three-year term, and is now serving in the Army (Fdg. 1).

Section 9 of the Act of June 10, 1922, provided that after July 1, 1922, an enlistment allowance should be paid to every honorably discharged enlisted man who reenlists within a period of three months from the date of his discharge. The Act of March 3, 1933, "suspended" for the fiscal year ending June 30, 1934, so much of Sections 9 and 10 of the Act of June 10, 1922, as provided for the payment of reenlistment allowances. This suspension was continued in identical language for the fiscal years 1935, 1936, and 1937. However, different statutory language was employed for the years

1938 and 1939. Thus, Section 402 of Public Resolution No. 122, approved June 21, 1938, provided in substance that no part of any appropriation contained in that or any other Act for the fiscal year ending June 30, 1939, should be available for the payment of enlistment allowances for reenlistments, notwithstanding the provisions of Sections 9 and 10 of the Act of June 10, 1922. Similar provisions had been made for the fiscal year 1938.

When respondent reenlisted on July 22, 1938, he was not paid a reenlistment allowance, although he had reenlisted within three months from the date upon which he had been honorably discharged from his preceding term (Fdg. 2). If respondent were entitled to a reenlistment allowance for his reenlistment of July 22, 1938, there is due him the sum of $75.00 (Fdg. 3).

Respondent brought suit in the Court of Claims to recover the sum of $75.00, alleged to be owing to him under the provisions of Section 9 of the Act of June 10, 1922. The United States opposed the claim on the ground that Section 402 of Public Resolution No. 122 of June 21, 1938, suspended the allowance for reenlistment during the fiscal year ending June 30, 1939. The Court of Claims entered judgment for the respondent.

SPECIFICATION OF ERRORS TO BE URGED

The Court of Claims erred:

1. In holding that an enlisted man reenlisting in the Army during the fiscal year ending June 30,

1939, and complying with the terms of Section 9 of the Act of June 10, 1922, is entitled to recover a reenlistment allowance.

2. In failing to hold that Section 402 of Public Resolution No. 122 of June 21, 1938, suspends the payment of any reenlistment allowance which might be otherwise payable under Sections 9 and 10 of the Act of June 10, 1922, to a man reenlisting in the military or other uniformed forces of the United States during the fiscal year ending June 30, 1939.

3. In holding that the purpose and effect of Section 402 of Public Resolution No. 122 of June 21, 1938, and the Act of May 28, 1937, differed from the purpose and effect of Section 18 of the Act of March 3, 1933, and identical provisions in subsequent Acts which suspended payment of the reenlistment allowance provided in Sections 9 and 10 of the Act of June 10, 1922.

4. In holding that the only purpose and effect of Section 402 of Public Resolution No. 122 was to prohibit the payment of reenlistment allowances from the funds appropriated for the fiscal year ending June 30, 1939.

5. In entering judgment for the respondent.

REASONS FOR GRANTING THE WRIT

1. This case presents an important question in the interpretation of a federal appropriation Act. In construing the Act as it did the Court of Claims failed to give effect to the manifest intention of

Congress. And as a result of the decision below there are over 100,000 potential claims for reenlistment allowances for the fiscal years 1938 and 1939 which will clog the dockets of the courts. Moreover, the decision below may affect a large number of appropriation Acts employing language similar to that involved herein. It is therefore essential to the orderly administration of these statutes that the question here presented be put at rest as soon as possible.

The basic statutory provisions which grant allowances for reenlistment are contained in Sections 9 and 10 of the Act of June 10, 1922. See Appendix A, *infra*. As an economy measure, however, Section 18 of the Act of March 3, 1933 (Appendix A, *infra*) declared that the foregoing provisions of the 1922 Act were "suspended as to reenlistments made during the fiscal year ending June 30, 1934." And during each of the following three years like statutes were enacted which, in language identical with the 1933 Act, suspended the operation of the 1922 Act as to reenlistment allowances for the fiscal years ending June 30, 1935, 1936, and 1937, respectively. For the fiscal years 1938 and 1939, Congress adopted a somewhat different formula to achieve the same end. As to 1939, the year involved herein, Congress provided that (Section 402 of Public Resolution No. 122, June 21, 1938, c. 554, 52 Stat. 809, 818) "no part of any appropriation contained in this or any other Act for the fiscal year ending June 30, 1939, shall be available for the payment of enlist-

ment allowance * * *" as to reenlistments made during the fiscal year ending June 30, 1939 * * *". See Appendix A, *infra*. And like provision had been made the preceding year with respect to reenlistments during the fiscal year ending June 30, 1938.

The court below, however, held that the variation in language between the provisions enacted for the fiscal years ending in 1934–1937 and the provisions dealing with the fiscal years ending in 1938 and 1939 was critical. It held that although the right to reenlistment allowances was suspended during the fiscal years 1934–1937, Congress nevertheless failed to achieve the same result for the fiscal years 1938 and 1939. It concluded that as to the latter years, the statutory limitation was merely binding upon administrative officers of the Government and that the basic right to the allowance remained in full force for which it could and did enter judgment. Thus the result of the decision is that although Congress took great pains to prevent the payment of any reenlistment allowance for the years 1938 and 1939, its express statutory prohibition can be circumvented by resort to the judicial process. And as a corollary to that result, each of the more than 100,000 potential claims becomes a potential lawsuit in order that the claim may be reduced to judgment.

It seems impossible to believe that Congress could have intended any such absurd consequences.

And even in the absence of any legislative history showing that the change in statutory language was not intended to produce a different result, the court below should have construed the statute in accord with its plain import. But here the legislative history, ignored by the court below, confirms and fortifies the obvious meaning of these provisions, leaving no doubt whatever as to the purpose of Congress.

The provisions with respect to the year 1938 originated as an amendment, introduced by Senator Byrnes, to the second deficiency appropriation Act for the fiscal year 1937. The amendment, in language identical with the statutory provisions applicable here, prohibited the use of appropriated funds for the payment of reenlistment allowances for the year 1938. Senator Byrnes stated (81 Cong. Rec. 4426):

> * * * the language of the amendment has been carried ordinarily in the Treasury and Post Office appropriation bill, but was not carried in that appropriation bill this year, and is therefore proposed to be included in the bill now before us.
>
> * * * * *
>
> The effect of it is simply to carry the same limitation that has been carried for years in the appropriation bills.
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> * * * * *
>
> Its purpose is to continue the appropriation situation that has existed for years, so

> that no bounty shall be paid for reenlistment in the military and other uniformed services.

This amendment was adopted by the Senate without recorded opposition. It was sent to conference, and in reporting the amendment to the House, the House managers described the amendment as "continuing during the fiscal year 1938 the suspension of the reenlistment gratuity for enlisted personnel of the Army, Navy, Marine Corps, and Coast Guard." 81 Cong. Rec. 5084. The House agreed to the amendment and the debate thereon demonstrates that all concerned viewed the proposal as differing in no way from the provisions in prior bills which suspended the payment of the reenlistment allowance. 81 Cong. Rec. 5083–4, 5088–91. The conclusion is inescapable that Congress believed that in enacting this amendment for the fiscal year of 1938 it had effectively suspended the provisions of the Act relating to reenlistment allowance, as it had done in prior years.

The legislative history also discloses that Congress, in adopting the identical provisions for the fiscal year 1939, likewise did not intend to change the nature of its prohibition of enlistment allowances. 83 Cong. Rec. 9512, 9677–9. It is clear that Congress deemed the payment of reenlistment allowance as fully suspended for the fiscal years 1938

and 1939 just as if the 1922 Act had been temporarily repealed.[1]

Finally, it is to be observed that when the second deficiency measure for the fiscal year of 1938 was pending before the House an amendment relating to reenlistment allowances for the fiscal year of 1939 was offered containing language identical with that contained in the statute here under consideration. A point of order was made against the amendment on the ground that it was legislation in an appropriation bill. Representative Woodrum of Virginia, who had charge of the amendment, admitted that the point of order was good, and the Chair sustained it. 83 Cong. Rec. 8567. It would seem clear that were the amendment merely a

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[1] 81 Cong. Rec. 5083–4, 5088–91; 83 Cong. Rec. 9512, 9677–9. See the statement by Representative Woodrum, chairman of the subcommittee in charge of the 1939 measure (p. 9677):

> No reenlistment allowances have been paid for the past 5 fiscal years in any of the services, and in the absence of permanent law stopping it, the inhibition has been shuttled about in economy bills and appropriation bills at one time or another. We have not paid them for 5 years, and the latter part of this amendment now before the House is a Senate amendment which discontinues for another year the payment of the reenlistment allowances.

Compare the discussion on various amendments offered to another bill (H. R. 10851, 75th Cong., 3d Sess.) seeking to appropriate sums for the payment of the allowances. 83 Cong. Rec. 8553–4, 8556–7, 8565–8. These appropriations did not survive the passage of the Act. 83 Cong. Rec. 8921, 9187, 9667–9, 9671; cf. S. Rept. 2161, 75th Cong., 3d Sess.

limitation upon the power of accounting officers as the court below held, and not legislation suspending prior legislation, a point of order against its inclusion in an appropriation bill would not properly have been made. See House Rules XXI, sec. 2.[2]

By failing to take into account the unmistakable purpose of the applicable statutory provisions, the Court of Claims has imparted to them a meaning that renders further review a matter of great importance. We are informed by the Comptroller General of the United States and by the War Department that as a result of the decision below, there are over 100,000 potential claimants for reenlistment allowances aggregating between ten and fifteen million dollars. And since each claim must be reduced to judgment, under the decision below, the burden upon the federal courts would be staggering.

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[2] Senate Rule XVI also precludes legislation in an appropriation act but it does not appear that any point of order was raised in Senate in respect of the suspension of reenlistment allowances.

[3] In *Brooks* v. *United States* (decided November 2, 1939, not yet officially reported), the United States District Court for the Eastern District of New York held that the several district courts had jurisdiction to entertain such suits for reenlistment allowances, although, on the merits, it ruled against the claimant.

The conflict on the merits, while not a basis for certiorari, nevertheless foreshadows further litigation with the likelihood of an ultimate conflict among the circuits. In view of the widespread litigation that may arise, an early resolu-

Moreover, the decision of the court below casts doubt on the effectiveness of a large number of statutes phrased in appropriation formulae similar to that employed in this case. It would seem to hold that, irrespective of the intent of Congress to suspend a prior general statute by forbidding the use of appropriated money, such prior statute, unless specifically suspended or repealed, continues to create rights against the United States which are susceptible of judicial ascertainment.[4]

Congress frequently has utilized language substantially similar to that here employed in various appropriation acts for the purpose of achieving objectives which might ordinarily be classified as strictly legislative in character. A number of recent statutes are set forth in Appendix B, *infra*, pp. 17–21 and the language of certain of such statutes is set forth in Appendix C, *infra*, pp. 22–24.

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tion of the present conflict is particularly desirable rather than to await the development of the usual conflict among the circuits.

[4] In *Strauss* v. *United States* (decided January 8, 1940, not yet officially reported), the Court of Claims allowed a retired rear admiral called back to active duty to recover active pay, although the Navy Department Appropriation Act of April 27, 1937, c. 140, 50 Stat. 96, 105, provided that no part of the sums appropriated for pay, etc., "shall be available to pay active-duty pay and allowances to officers in excess of nine on the retired list * * *," and the claimant was the tenth retired officer called to active service. The court, relying specifically upon its decision in the instant case, held that the Act of April 27, 1937, did not affect the authorization act granting active pay to retired officers called to active duty.

The possible impact of the decision below upon these statutes is, therefore, an additional consideration pointing to the general importance of this case.

2. The decision below is in substantial conflict with applicable decisions of this Court.

In *Belknap v. United States*, 150 U. S. 588, the claimant was an Indian agent, whose compensation had been fixed by statute at $1800 a year. Later appropriation acts, however, appropriated only $1500 for the office, and he sought to recover the difference. This Court denied his claim for additional salary. Cf. *United States* v. *Vulte*, 233 U. S. 509, 515; *Mathews* v. *United States*, 123 U. S. 182, 186; *Wallace* v. *United States*, 133 U. S. 180; *United States* v. *Perry*, 50 Fed. 743 (C. C. A. 8th), appeal dismissed, 145 U. S. 660; *United States ex rel. Gillett* v. *Dern*, 74 F. (2d) 485 (App. D. C.). And this Court has consistently held that the effect of a prohibition against the use of appropriated funds for a purpose authorized by prior legislation is to be governed by the intention of Congress: it may suspend or supersede the prior authorizing legislation if Congress so intended. *United States* v. *Mitchell*, 109 U. S. 146, 150; *Dunwoody* v. *United States*, 143 U. S. 578.

The intention of Congress in this case is clear and unmistakable. The failure of the Court of Claims to give effect to such intent brings this case into substantial conflict with the foregoing decisions of this Court.

CONCLUSION

It is respectfully submitted that, for the reasons stated, this petition for a writ of certiorari should be granted.

FRANCIS BIDDLE,
Solicitor General.

FEBRUARY 1940.

APPENDIX A

Act of June 10, 1922, c. 212, 42 Stat. 625, 629–630 (U. S. C., Title 10, sec. 633; Title 37, secs. 13, 16):

SEC. 9. * * * On and after July 1, 1922, an enlistment allowance equal to $50, multiplied by the number of years served in the enlistment period from which he has last been discharged, shall be paid to every honorably discharged enlisted man of the first three grades who reenlists within a period of three months from the date of his discharge, and an enlistment allowance of $25, multiplied by the number of years served in the enlistment period from which he has last been discharged, shall be paid to every honorably discharged enlisted man of the other grades who reenlists within a period of three months from the date of his discharge. * * *

SEC. 10. [redacted]

* * * * *

* * * Existing laws authorizing a reenlistment gratuity to enlisted men of the Navy and Coast Guard are hereby repealed, and an enlistment allowance equal to $50 multiplied by the number of years served in the enlistment period from which he has last been discharged, but not to exceed $200, shall be paid to every honorably discharged enlisted man of the first three grades who reenlists within a period of three months from the date of his discharge; and an enlistment allowance of $25 multiplied by the number of years served in the enlistment period from which he has last been dis-

charged, but not to exceed $100, shall be paid to every honorably discharged enlisted man of the other grades who reenlists within a period of three months from the date of his discharge. * * *

Public Resolution No. 122, June 21, 1938, c. 554, 52 Stat. 809, 818:

SEC. 402. For an additional amount for salaries and expenses of the Rural Electrification Administration, fiscal years 1938 and 1939, including the same objects and under the same conditions specified under this head in the Independent Offices Appropriation Act, 1939, including printing and binding, there is appropriated, out of any money in the Treasury not otherwise appropriated, the sum of $700,000: *Provided*, That no part of any appropriation contained in this or any other Act for the fiscal year ending June 30, 1939, shall be available for the payment of enlistment allowance to enlisted men for reenlistment within a period of three months from date of discharge as to reenlistments made during the fiscal year ending June 30, 1939, notwithstanding the applicable provisions of sections 9 and 10 of the Act entitled "An Act to readjust the pay and allowances of the commissioned and enlisted personnel of the Army, Navy, Marine Corps, Coast Guard, Coast and Geodetic Survey, and Public Health Service," approved June 10, 1922 (37 U. S. C. 13, 16).[1]

Act of March 3, 1933, c. 242, 47 Stat. 1489, 1519:

SEC. 18. So much of sections 9 and 10 of the Act entitled "An Act to readjust the pay

[1] The Act of May 28, 1937, c. 277, 50 Stat. 213, 232, contains language identical with that of the *proviso* to section 402, with the substitution of "fiscal year ending June 30, 1938" for "fiscal year ending June 30, 1939."

and allowances of the commissioned and enlisted personnel of the Army, Navy, Marine Corps, Coast Guard, Coast and Geodetic Survey, and Public Health Service," approved June 10, 1922 (U. S. C., title 37, secs. 13 and 16), as provides for the payment of enlistment allowances to enlisted men for reenlistment within a period of three months from date of discharge is hereby suspended as to reenlistments made during the fiscal year ending June 30, 1934.

This section was continued in full force and effect for the fiscal years ending June 30, 1935, June 30, 1936, and June 30, 1937, by Section 24 of the Act of March 28, 1934, c. 102, 48 Stat. 509, 523; the Act of May 14, 1935, c. 110, 49 Stat. 218, 226-7; and the Act of June 23, 1936, c. 725, 49 Stat. 1827, 1837, respectively.

APPENDIX B

The following statutes are illustrative of instances where the Congress has undertaken to legislate through the medium of appropriation Acts:

Act of April 6, 1914, c. 52, 38 Stat. 312, 335, Sec. 5 (U. S. C., Title 5, sec. 55) (Payment of accountants).

Act of May 10, 1916, c. 117, 39 Stat. 66, 120, as amended by Act of August 29, 1916, c. 417, 39 Stat. 556, 582 (U. S. C., Title 5, secs. 58, 59). (Prohibition of payment of double salaries).

Rev. Stat. Sec. 1761, as amended by Public Res. of June 7, 1924, c. 377, 43 Stat. 669 (U. S. C., Title 5, sec. 56) (Prohibition of payment of salary to unconfirmed officials appointed during session of Congress).

Act of Oct. 22, 1913, c. 32, 38 Stat. 208, 212 (U. S. C., Title 5, sec. 54) (Prohibition of employment of publicity experts).

Rev. Stat. Sec. 1766, as amended by Act of June 10, 1921, c. 18, 42 Stat. 20, 23 (U. S. C., Title 5, sec. 82) (Prohibition of salary payments to debtors of the United States).

Act of July 1, 1937, c. 423, 50 Stat. 442, 446; Act of June 11, 1938, c. 347, 52 Stat. 642, 646 (limiting employment of aliens in military activities).

Act of June 16, 1937, c. 359, 50 Stat. 261, 265, Act of April 27, 1938, c. 180, 52 Stat. 248, 251 (limiting employment of aliens in American missions abroad).

Act of April 27, 1938, c. 180, 52 Stat. 248, 289, Act of May 23, 1938, c. 259, 52 Stat. 410, 435, Act of June 25, 1938, c. 681, 52 Stat. 1114, 1162 (limiting compensation of certain alien officers and employees of the United States).

Act of June 29, 1937, c. 404, 50 Stat. 395, 396, Act of June 16, 1938, c. 464, 52 Stat. 710, 711–712 (prohibition of payment of salary to Department of Agriculture officials and employees predicting future prices of cotton).

Act of April 27, 1938, c. 180, 52 Stat. 248, 289, Act of March 28, 1938, c. 55, 52 Stat. 120, 148, and other acts (prohibition of salary payments to officials whose nomination the Senate has rejected).

Act of June 16, 1937, c. 359, 50 Stat. 261, 263, Act of April 27, 1938, c. 180, 52 Stat. 248, 250 (prohibition of salary payments to foreign service officials receiving another salary from the United States).

Act of April 27, 1937, c. 140, 50 Stat. 96, 101 (prohibition of payments to naval reservists drawing a pension from the United States).

Act of July 1, 1937, c. 423, 50 Stat. 442, 462 (prohibition of payments, etc., to National Guard officers or men drawing a United States pension).

Act of July 1, 1937, c. 423, 50 Stat. 442, 464 (prohibition of payments, etc., to members of the Organized Reserves drawing pensions).

Act of April 27, 1937, c. 140, 50 Stat. 96, 115, Act of July 1, 1937, c. 423, 50 Stat. 442, 467, and many other acts (prohibition of payments to officials using time measuring devices in employees' work, etc.).

Act of June 28, 1937, c. 396, 50 Stat. 329, 344 (Social Security Board experts or attorneys receiv-

ing more than $5,000 annual salary to be confirmed by Senate).

Act of April 27, 1938, c. 180, 52 Stat. 248, 269 (Department of Justice attorneys to be admitted to the bar).

Act of April 27, 1938, c. 180, 52 Stat. 248, 264 (prohibition of salary payments to probation officers whose work falls below standards set by the Attorney General, etc.).

Act of June 16, 1937, c. 359, 50 Stat. 261, 278 (conciliation commissioners to be paid only one fee per case, and only after final disposition of the case).

Act of June 16, 1937, c. 359, 50 Stat. 261, 300, Act of April 27, 1938, c. 180, 52 Stat. 248, 286–287 (Secretary of Labor to expend less than authorized by existing law for enforcement of contract laborers act).

Act of June 29, 1937, c. 403, 50 Stat. 359, 363 (District of Columbia to insert legal advertisements less extensively than required by existing law).

Act of April 27, 1937, c. 140, 50 Stat. 96, 107 (limiting the number of midshipmen at the Naval Academy to a number less than required by existing law).

Act of July 1, 1937, c. 423, 50 Stat. 442, 464, (limiting active duty of Army reserve officers).

Act of April 27, 1938, c. 180, 52 Stat. 248, 269 (limiting payment of witness, juror, and bailiff fees).

Act of April 27, 1938, c. 180, 52 Stat. 248, 268 (only one witness fee to be paid).

Act of April 27, 1938, c. 180, 52 Stat. 248, 268 (bailiffs only to be paid for work performed when marshals unavailable).

Act of July 1, 1937, c. 423, 50 Stat. 442, 446, Act of June 11, 1938, c. 347, 52 Stat. 642, 646 (no payments to retired Army officers connected with the sale of supplies to Army).

Act of July 1, 1937, c. 423, 50 Stat. 442, 447, Act of June 11, 1938, c. 347, 52 Stat. 642, 646 (no payments to Army officers or men connected with military journals accepting paid advertising of firms dealing with War Department).

Act of July 3, 1930, c. 848, 46 Stat. 949, 966, Act of February 23, 1931, c. 282, 46 Stat. 1376, 1391–1392 (no payments to public school officials soliciting funds without authorization from pupils).

Act of May 23, 1938, c. 259, 52 Stat. 410, 427 (no payments to Tariff Commission members interested in proceedings in which they participate).

Act of June 14, 1935, c. 241, 49 Stat. 341, 356 (no payments to District of Columbia teachers teaching or advocating communism).

Act of June 29, 1937, c. 401, 50 Stat. 352, 355, Act of June 21, 1938, c. 554, 52 Stat. 809, 813, Sec. 14 (no payments to relief officials participating in state or local elections).

Act of April 4, 1938, c. 62, 52 Stat. 156, 166, 171 (no payments on District of Columbia contracts not awarded to the lowest bidder, etc.).

Act of May 25, 1939, c. 149, Public No. 90, 76th Cong., 1st Sess., p. 7 (limiting number of instructors in the Naval Academy).

Act of June 16, 1939, c. 208, Public No. 130, 76th Cong., 1st Sess., p. 11 (requiring members of the Capitol Police Force to meet prescribed standards).

Act of June 29, 1939, c. 248, Public No. 156, 76th Cong., 1st Sess., p. 20 (requiring probation officers to meet certain prescribed standards).

Act of July 15, 1939, c. 281, Public No. 176, 76th Cong., 1st Sess., p. 6 (limiting legal advertisements of the District of Columbia "notwithstanding the requirement that such advertising provided by existing law").

Revised Statutes, section 5266 (U. S. C., Title 47, sec. 3) (no payments to any telegraph company neglecting or refusing to accord preference to Government telegrams).

Act of February 24, 1899, c. 187, 30 Stat. 846, 864, see U. S. C., Title 5, sec. 27 (forbidding use of recording clocks for recording time of Government employees).

APPENDIX C

Certain of the statutes listed in Appendix B provide as follows:

Act of October 22, 1913, c. 32, 38 Stat. 208, 212 (U. S. C., Title 5, sec. 54):

> No money appropriated by this or any other Act shall be used for the compensation of any publicity expert unless specifically appropriated for that purpose.

Act of April 6, 1914, c. 52, 38 Stat. 312, 335 (U. S. C., Title 5, sec. 55):

> SEC. 5. That no part of any money appropriated in this or any other Act shall be used for compensation or payment of expenses of accountants or other experts in inaugurating new or changing old methods of transacting the business of the United States or the District of Columbia unless authority for employment of such services or payment of such expenses is stated in specific terms in the Act making provision therefor and the rate of compensation for such services or expenses is specifically fixed therein, or be used for compensation of or expenses for persons aiding or assisting such accountants or other experts, unless the rate of compensation of or expenses for such assistants is fixed by officers or employees of the United States or District of Columbia having authority to do so, and such rates of compensation or expenses so fixed shall be paid only to the person so employed.

Act of June 29, 1937, c. 403, 50 Stat. 359, 363:

For general advertising, authorized and required by law, and for tax and school notices and notices of changes in regulations, $7,000: *Provided*, That this appropriation shall not be available for the payment of advertising in newspapers published outside of the District of Columbia, notwithstanding the requirement for such advertising provided by existing law.

For advertising notice of taxes in arrears July 1, 1937, as required to be given by the Act of February 28, 1898, as amended, to be reimbursed by a charge of 50 cents for each lot or piece of property advertised, $5,500: *Provided*, That this appropriation shall not be available for the payment of advertising the delinquent tax list for more than once a week for two weeks in the regular issue of one morning or one evening newspaper published in the District of Columbia, notwithstanding the provisions of existing law.

Act of June 14, 1935, c. 241, 49 Stat. 341, 356:

* * * *Provided*, That hereafter no part of any appropriation for the public schools shall be available for the payment of the salary of any person teaching or advocating Communism.

Act of June 16, 1938, c. 464, 52 Stat. 710, 711:

* * * *Provided further*, That no part of the funds appropriated by this Act shall be used for the payment of any officer or employee of the Department of Agriculture who, as such officer or employee, or on behalf of the Department or any division, commission, or bureau thereof, issues, or causes to be issued, any prediction, oral or written, or forecast with respect to future prices of cotton or the trend of same: * * *

Act of July 1, 1937, c. 423, 50 Stat. 442, 446:

No payment shall be made from money appropriated in this Act to any officer on the retired list of the Army who, for himself or for others, is engaged in the selling of, contracting for the sale of, or negotiating for the sale of, to the Army or the War Department, any war materials or supplies.

Act of April 27, 1937, c. 140, 50 Stat. 96, 107:

* * * *Provided further,* That no part of this appropriation shall be available for the pay of any midshipmen whose admission subsequent to January 30, 1937, would result in exceeding at any time an allowance of four midshipmen for each Senator, Representative, and Delegate in Congress; of one midshipman for Puerto Rico, a native of the island, appointed on nomination of the Governor, and of four midshipmen from Puerto Rico, appointed on nomination of the Resident Commissioner; and of four midshipmen from the District of Columbia: * * *

Act of May 23, 1938, c. 259, 52 Stat. 410, 427:

* * * *Provided further,* That no part of this appropriation shall be used to pay the salary of any member of the Tariff Commission who shall hereafter participate in any proceedings under sections 336, 337, and 338 of the Tariff Act of 1930, wherein he or any member of his family has any special, direct, and pecuniary interest, or in which he has acted as attorney or special representative.

U. S. GOVERNMENT PRINTING OFFICE: 1949

No. 705

In the Supreme Court of the United States

OCTOBER TERM, 1939

THE UNITED STATES, PETITIONER

v.

EMMETT F. DICKERSON

ON WRIT OF CERTIORARI TO THE COURT OF CLAIMS

BRIEF FOR THE UNITED STATES

INDEX

CITATIONS

[1] Other statutes are cited in Appendix B, but are not referred to in the text of this brief, and are, therefore, not included in this index.

In the Supreme Court of the United States

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ON WRIT OF CERTIORARI TO THE COURT OF CLAIMS

BRIEF FOR THE UNITED STATES

OPINION BELOW

The opinion of the Court of Claims (R. 3–9) is not yet officially reported.

JURISDICTION

The judgment of the Court of Claims was entered November 6, 1939 (R. 9). The petition for a writ of certiorari was filed February 6, 1940 (R. 9), and granted March 25, 1940. The jurisdiction of this Court rests upon Section 3 (b) of the Act of February 13, 1925, as amended.

QUESTION PRESENTED

Whether Section 402 of Public Resolution No. 122 of June 21, 1938, *infra*, p. 21, suspends the en-

listment allowance otherwise payable under Section 9 of the Act of June 10, 1922, *infra*, p. 20, to men reenlisting in the military forces of the United States during the fiscal year ending June 30, 1939.

STATUTES INVOLVED

The applicable portions of the statutes involved are set forth in Appendix A, *infra*, pp. 20–22.

STATEMENT

The respondent has served in the United States Army as a private or a noncommissioned officer with substantial continuity since August, 1917 (R. 3). He was honorably discharged upon the expiration of each of his enlistments, his last discharge being from an enlistment terminating on July 21, 1938 (R. 3). On July 22, 1938, he reenlisted for another three-year term, and is now serving in the Army (R. 3).

Section 9 of the Act of June 10, 1922, provided that after July 1, 1922, an enlistment allowance should be paid to every honorably discharged enlisted man who reenlists within a period of three months from the date of his discharge. The Act of March 3, 1933, "suspended" for the fiscal year ending June 30, 1934, so much of Sections 9 and 10 of the Act of June 10, 1922, as provided for the payment of enlistment allowances. This suspension was continued in identical language for the fiscal years 1935, 1936, and 1937. However, different statutory language was employed for the years

1938 and 1939. Thus, Section 402 of Public Resolution No. 122, approved June 21, 1938, provided in substance that no part of any appropriation contained in that or any other Act for the fiscal year ending June 30, 1939, should be available for the payment of enlistment allowances for reenlistments, notwithstanding the provisions of Sections 9 and 10 of the Act of June 10, 1922. Similar provisions had been made for the fiscal year 1938.

When respondent reenlisted on July 22, 1938, he was not paid an enlistment allowance, although he had reenlisted within three months from the date upon which he had been honorably discharged from his preceding term (R. 3). If respondent were entitled to an enlistment allowance for his reenlistment of July 22, 1938, there is due him the sum of $75.00 (R. 3).

Respondent brought suit in the Court of Claims to recover the sum of $75.00, alleged to be owing to him under the provisions of Section 9 of the Act of June 10, 1922. The United States opposed the claim on the ground that Section 402 of Public Resolution No. 122 of June 21, 1938, suspended the allowance for reenlistment during the fiscal year ending June 30, 1939. The Court of Claims entered judgment for the respondent.

SPECIFICATION OF ERRORS TO BE URGED

The Court of Claims erred:

1. In holding that an enlisted man reenlisting in the Army during the fiscal year ending June 30,

1939, and complying with the terms of Section 9 of the Act of June 10, 1922, is entitled to recover an enlistment allowance.

2. In failing to hold that Section 402 of Public Resolution No. 122 of June 21, 1938, suspends the payment of any enlistment allowance which might be otherwise payable under Sections 9 and 10 of the Act of June 10, 1922, to a man reenlisting in the military or other uniformed forces of the United States during the fiscal year ending June 30, 1939.

3. In holding that the purpose and effect of Section 402 of Public Resolution No. 122 of June 21, 1938, and the Act of May 28, 1937, differed from the purpose and effect of Section 18 of the Act of March 3, 1933, and identical provisions in subsequent Acts which suspended payment of the enlistment allowance provided in Sections 9 and 10 of the Act of June 10, 1922.

4. In holding that the only purpose and effect of Section 402 of Public Resolution No. 122 was to prohibit the payment of enlistment allowances from the funds appropriated for the fiscal year ending June 30, 1939.

5. In entering judgment for the respondent.

SUMMARY OF ARGUMENT

The question whether a restriction on the expenditure of appropriated funds suspends an allowance authorized by prior legislation depends solely on the intention of Congress. The proviso of Section 402 of Pub. Res. No. 122 was intended to suspend

the right to an enlistment allowance for the fiscal year 1939 and not merely to prohibit the use of appropriated funds for such purpose. That such was the intention is clear from the face of the statute and the legislative history. The difference between the form of language employed in the fiscal years 1938 and 1939 and that used in the appropriation Acts in the four preceding years was due not to a difference in Congressional intention but was probably attributable to "considerations of parliamentary tactics and strategy."

ARGUMENT

Introductory.—Section 402 of Public Resolution No. 122, *infra*, p. 21, provided that "no part of any appropriation contained in this or any other Act for the fiscal year ending June 30, 1939, shall be available for the payment" of any enlistment allowances for "reenlistments made during the fiscal year ending June 30, 1939, notwithstanding the applicable portions of sections 9 and 10" of the Act of June 10, 1922. The court below held that the limitation expressed in this proviso had for its sole purpose the placing of an inhibition upon the accounting officers of the Government against the payment of such allowances, and that it left unimpaired the right of men reenlisting in the uniformed services of the United States to receive such enlistment allowances. It concluded that the obligation of the United States to pay such allowances remained in full force and effect and that the

United States was legally liable therefor, notwithstanding the prohibition of the statute against payment.

We submit that the decision of the court below was incorrect. In cases of this character the law is well settled that the intent of Congress is controlling. The language of the Act itself, its legislative history, the ordinary rules of statutory construction, and the manner in which the Congress commonly employs provisos to appropriation Acts to achieve similar results clearly disclose that Congress intended to suspend the payment of enlistment allowances for the fiscal year 1939. The United States District Court for the Eastern District of New York so held in *Brooks* v. *United States* (decided November 2, 1939, not yet officially reported).

1. This Court has consistently held that the effect on prior legislation of a prohibition against the use of appropriated funds for a purpose theretofore authorized is to be determined by the intent of Congress; it may suspend, supersede, or modify the prior authorizing legislation if Congress so intends. *United States* v. *Mitchell*, 109 U. S. 146, 150; *Dunwoody* v. *United States*, 143 U. S. 578; *Belknap* v. *United States*, 150 U. S. 588, 593; *United States* v. *Valte*, 233 U. S. 509, 515; *United States* v. *Perry*, 50 Fed. 743, 748 (C. C. A. 8th); *cf. Wallace* v. *United States*, 133 U. S. 180; *United States ex rel. Gillett* v. *Dern*, 74 F. (2d) 485 (App. D. C.).

As this Court observed in *United States* v. *Mitchell* (109 U. S. 146, at 150): "The whole question depends on the intention of Congress as expressed in the statutes." See *Belknap* v. *United States*, 150 U. S. 588, 595.

2. A deliberate limitation in an appropriation Act on the use of appropriated funds evidences on its face an intention to modify or suspend *pro tanto* a prior authorization. This Court has consistently so held wherever such suspension or modification would serve a reasonable or rational end. *United States* v. *Mitchell*, 109 U. S. 146; *Mathews* v. *United States*, 123 U. S. 182; *Belknap* v. *United States*, 150 U. S. 588; *United States* v. *Vulte*, 233 U. S. 509; *cf. United States* v. *Langston*, 118 U. S. 389.

The purpose of the restriction in question, quite obviously, was to reduce the ordinary expenditures of the Government during a period of economic crisis. A provision expressly suspending the enlistment allowance was first adopted in the Treasury-Post Office Appropriation Act of 1934 (sec. 18 of the Act of March 3, 1933, c. 212, 47 Stat. 1489, 1519). The suspension was contemporaneous with other economy measures reducing salaries and other ordinary expenditures of the Government (see Act of June 30, 1932, Pt. II, c. 314, 47 Stat. 399), was but one of several economy provisions in the Treasury-Post Office Appropriation Act of 1934 (see sections 2–18 of the Act of March 3, 1933, 47 Stat. 1489,

1513–1519), and was continued in effect for the fiscal year 1935 as an amendment to the Economy Act of March 20, 1933, c. 3, 48 Stat. 8 (see Act of March 28, 1934, Title II, Economy Provisions, 48 Stat. 509, 523). The restriction on the use of all appropriated funds in the statute here in question merely continued the policy first established in 1933.

The purpose of Congress would obviously be defeated if judgments for enlistment allowances could be obtained in the Court of Claims to be paid from appropriations for the payment of such judgments. That Congress did not withhold payment out of funds appropriated by this statute merely to permit payment out of another appropriation Act is evident from the express provision that the restriction should extend to the use of funds appropriated by "this or any other Act." It may be true that a judgment in the Court of Claims for enlistment allowance might not be presented for payment until a subsequent year, but the purpose of Congress in forbidding the payment of enlistment allowances was to eliminate certain expenditures, not merely to postpone them. Any contention that Congress intended only to postpone payment for the period required to obtain a judgment in the Court of Claims is sufficiently answered by the fact that the prohibition has been continued in the appropriation Acts for six consecutive years. *United States* v. *Mitchell*, 109 U. S. 146, 149. Moreover, since the purpose of Congress was ad-

mittedly to achieve some economy, it could not have been the intention to remit claimants of enlistment allowances to a suit in the Court of Claims and thus not only to put the claimant to an unreasonable expense but to incur for the Government certain unavoidable costs of litigation.[1]

The court below, it should be observed, did not hold that the right to an enlistment allowance could not be suspended by a provision in an appropriation Act. The court acknowledged that the express "suspension" of the right in Section 18 of the Treasury-Post Office Appropriation Act of 1934, continued in identical language in various appropriation Acts through the fiscal year 1937, extinguished the right to an allowance for those years, and that recovery for that period could not be obtained in the Court of Claims. The court took the view, however, that the change in the language in the appropriation Acts for the fiscal years 1938 and 1939 and the omission in these statutes of language expressly "suspending" the allowance evidenced a Congressional intention

[1] We are advised by the Comptroller General that there are approximately 100,000 scheduled claims for estimated allowances for the fiscal years of 1938 and 1939, each of which could be made the subject matter of an independent suit. Even though the legal question involved were decided adversely to the Government in this proceeding, it would be necessary to reduce each claim to judgment in the Court of Claims since the allowance could not be paid save out of an appropriation to pay judgments against the United States.

merely to restrict the use of the appropriated funds without "suspending" the right and that suit to recover the allowance could therefore be maintained in the Court of Claims.

The court below, we suggest, failed to give effect to the language of the appropriation Acts for the fiscal years 1938 and 1939 providing that enlistment allowances should not be paid "notwithstanding the applicable provisions of sections 9 and 10" of the Act of June 10, 1922, authorizing the payment of enlistment allowances. The conclusive answer, however, as the legislative history demonstrates, is that the change in the form of language did not reflect a change of intention but at most a change of parliamentary procedure.

3. The provisions with respect to the year 1938 originated as an amendment, introduced by Senator Byrnes, to the second deficiency appropriation Act for the fiscal year 1937. The amendment, in language identical with the statutory provisions applicable here, prohibited the use of appropriated funds for the payment of enlistment allowances for the year 1938. Senator Byrnes stated (81 Cong. Rec. 4426):

> * * * the language of the amendment has been carried ordinarily in the Treasury and Post Office appropriation bill, but was not carried in that appropriation bill this year, and is therefore proposed to be included in the bill now before us.
>
> * * * * *

> The effect of it is simply to carry the same limitation that has been carried on for years in the appropriation bills.
>
> * * * * *
>
> Its purpose is to continue the appropriation situation that has existed for years, so that no bounty shall be paid for reenlistment in the military and other uniformed services.

This amendment was adopted by the Senate without recorded opposition (81 Cong. Rec. 4426). It was sent to conference, and in reporting the amendment to the House, the House managers described the amendment as "continuing during the fiscal year 1938 the suspension of the reenlistment gratuity for enlisted personnel of the Army, Navy, Marine Corps, and Coast Guard." 81 Cong. Rec. 5084. The House agreed to the amendment and the debate thereon demonstrates that all concerned, including the opponents of the measure, viewed the proposal as differing in no way from the provisions in prior bills which suspended the payment of the enlistment allowance. 81 Cong. Rec. 5083–5084, 5088–5091. The conclusion is inescapable that Congress believed that in enacting this amendment for the fiscal year 1938 it had effectively suspended the provisions of the Act relating to enlistment allowances, as it had done in prior years.

The legislative history also discloses that Congress, in adopting the identical provisions for the fiscal year 1939, likewise did not intend to change

the nature of its prohibition of enlistment allowances. 83 Cong. Rec. 9512, 9677–9679.

The provision was first introduced as an amendment to the second deficiency appropriation bill for the fiscal year 1938 (H. R. 10851, 75th Cong., 3d Sess.), then pending before the House. A point of order was made against the amendment on the ground that it was legislation in an appropriation bill. Representative Woodrum of Virginia, who had charge of the amendment, admitted that the point of order was good, and the Chair sustained it (83 Cong. Rec. 8567). The same amendment was then offered in the Senate, and the Presiding Officer also ruled that it would change existing law, and must be stricken (83 Cong. Rec. 9189). It would seem clear that were the amendment merely a limitation upon the power of accounting officers, as the court below held, and not legislation suspending prior legislation, a point of order against its inclusion in an appropriation bill could not have been sustained. See House Rule XXI, sec. 2; Senate Rule XVI. The provision was thereafter included by the conference committee as a proviso to Section 402 of H. J. Res. 679 (which later became Pub. Res. No. 122), appropriating funds for the Rural Electrification Administration, on which a point of order was not permitted by the rules. No objection was made in the Senate (83 Cong. Rec. 9512); in the House complaint was voiced that a point of order could not then be made (83 Cong. Rec. 9678–9679).

The 1939 proviso was regarded as having the same purpose and effect as the provisions carried in various appropriations for the five preceding years. Representative Woodrum, chairman of the subcommittee in charge of the measure, said in presenting the amendment to the House (p. 9677):

> No reenlistment allowances have been paid for the past 5 fiscal years in any of the services, and in the absence of permanent law stopping it, the inhibition has been shuttled about in economy bills and appropriation bills at one time or another. We have not paid them for 5 years, and the latter part of this amendment now before the House is a Senate amendment which discontinues for another year the payment of the reenlistment allowances.

The statements of the two chief opponents of further suspension of the allowance (Representatives Scott and Izac) indicate their understanding that the act covering the fiscal year 1939, like the acts of previous years, prevented a reenlisting man from receiving the bounty (pp. 9678–9679). It is clear that Congress deemed the payment of enlistment allowance as fully suspended for the fiscal years 1938 and 1939 as if the 1922 Act had been temporarily repealed.[2]

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[2] For conclusive corroboration of this view, see the discussion on the various amendments offered to another bill (H. R. 10851, 75th Cong., 3d Sess.) seeking to appropriate sums for the payment of the allowances, pp. 14–16 and especially note 4, *infra*.

4. The legislative history relied on by respondent in support of his position does not relate to the prohibition embodied in section 402 but to an entirely different measure, the second deficiency appropriation bill for 1938 (H. R. 10851, 75th Cong., 3d Sess.). And the statements quoted (Br. in Opp. 4) are wholly consistent with the Government's view.

H. R. 10851, as it came to the floor, contained the usual appropriation for support of the various service corps, but did not include any specific appropriation for the payment of enlistment allowances; nor did it include any prohibition upon their payment. Several attempts were made, on the floor of the House of Representatives, to amend the bill so as to make express provision for the payment of the bounty to the various services (83 Cong. Rec. 8553–8554, 8556–8557, 8565–8568), one of which was successful, and the others not. During the discussion on these amendments, Representatives Bacon and Wadsworth stated that specific provision, while desirable, was really unnecessary since the general lump sum appropriation to the Army, Navy, Marine Corps, and Coast Guard covered the allowances, and if payment was not made, the reenlisted men could sue in the Court of Claims. (See Br. in Opp. 4).* These state-

* For years after the Act of June 10, 1922, appropriation Acts listed no designated sum for payment of the enlistment allowance, but the lump sum appropriation for pay in the ordinary appropriation Acts was held to be available. See the opinion of the Court of Claims (R. 6).

ments were made in connection with a bill which contained no prohibition of payment analogous to section 402,[4] and which left the 1922 Act in full

[4] Immediately *after* his amendment to include the prohibition in H. R. 10851 was stricken on point of order in the Senate, Senator Byrnes also suggested, on the same theory as the two Representatives (and not, as respondent asserts (Br. in Opp. 4), in opposition to them) that reenlisted men denied this allowance might sue in the Court of Claims. It was his view that the prohibition might be necessary even if no specific provision was made for payment of the allowances.

The following colloquy then occurred, clearly revealing the purpose of the restrictive amendment (identical with section 402) (83 Cong. Rec. 9190):

"Mr. WALSH. What the Senator sought to do was to have Congress declare as its policy that it did not intend in the future to pay such reenlistment bounties, so as to prevent possible claims; is not that true?

"Mr. BYRNES. Mr. President, the sole position of the committee is that no funds being provided, we should not leave open the opportunity for numbers of persons to file claims in the Court of Claims in behalf of men who reenlist, with the result that a year from now, or 2 years from now, some men would receive the reenlistment bounty or some part of it, after the attorneys receive their fees.

"Mr. WALSH. I think I understand."

H. R. 10851, the Second Deficiency Appropriation Bill, and H. J. Res. 679 (later becoming Pub. Res. No. 122), which embodied Section 402, were being considered by the Congress contemporaneously—at the end of a session.

After the point of order to the proposed amendment to H. R. 10851 had been sustained, Senator Byrnes also said (83 Cong. Rec. 9189–9190):

"I will say to the Senator from Massachusetts, in the light of the ruling of the Chair, that before the Congress adjourns I shall certainly make an effort to do something to bring about a change, so that there will not be dissatis-

effect The specific enlistment allowance appropriation adopted by the House did not survive the passage of the Act (83 Cong. Rec. 9187, 9667–9669, 9671; cf. Sen. Rep. 2161, 75th Cong., 3d Sess.), and the suspension provision found place in another act."

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faction, among the various services. If the bounties were all restored, millions of dollars would be involved."

[5] Accepted legislative practice reinforces the conclusion that Congress sought to suspend the operation of the 1922 Act as to reenlistments during the fiscal year ending in 1939. Congress has frequently utilized language substantially similar to that here employed in various appropriation acts for the purpose of achieving objectives which might ordinarily be classified as strictly legislative in character, including the suspension of preexisting statutory rights and privileges. A number of recent statutes are set forth in Appendix B, *infra*, pp. 23–27, and the language of certain of such statutes is set forth in Appendix C, *infra*, pp. 28–30. Reasons of strategy, time, and legislative convenience often impel the adoption of this method, even though it may contravene the stricter niceties of parliamentary procedure. Cf. Luce, *Legislative Problems* (1935), pp. 421 *et seq.*, 432. In view of this common practice and of the decisions of this Court, it obviously cannot be successfully urged, as respondent seeks to do (Br. in Opp. 5–6), that section 402 clearly and unambiguously on its face "imposes a limitation upon the use of appropriations and nothing more." As Circuit Judge Sanborn, in 1892, said of an identical "appropriation" formula, in *United States* v. *Perry*, 50 Fed. 743, 748 (C. C. A. 8th):

"For many years it has been a common practice of the congress to enact general provisions of law in the acts making appropriations, until there is now little, if any, presumption that such provisions are not intended to be permanent and general."

5. In view of the unequivocal character of the Congressional intention to continue the prohibition on the payment of enlistment allowances unchanged for the fiscal years 1938 and 1939, the explanation, if any, for the difference between the form of language employed for those years and that used in the appropriation Acts for the previous four years is immaterial. It is probable, however, that the change was due to "considerations of parliamentary tactics and strategy * * *." Cf. *Helvering* v. *Hallock*, No. 110, this Term, decided January 29, 1940. It is pertinent to observe that the prohibition on the payment of enlistment allowances first appeared in Title II of the Treasury-Post Office Appropriation Act of 1934, along with numerous other economy provisions; was included the next year in Title II, Economy Provisions of the Independent Office Appropriation Act for the fiscal year 1935 as part of an amendment to the Economy Act of March 20, 1933; was inserted the two years following in the Treasury-Post Office Appropriation Acts for the fiscal years 1936 and 1937; was passed in its present form as an amendment to the Second Deficiency Appropriation Bill of 1937 and finally as a rider to Section 402 of H. J. Res. 679 (which became Pub. Res. No. 122), appropriating funds for the Rural Electrification Administration for the fiscal year 1939.

The particular statute in which the prohibition was included from year to year was obviously dictated by parliamentary exigencies and not by con-

siderations of form or logic. A like explanation probably accounts for the change in the form of words employed for the fiscal years 1938 and 1939. As set forth above, the opponents of the prohibition for the fiscal year 1939 objected to the provision as first introduced on the ground that it constituted legislation, the objection being sustained in both Houses of Congress. It is reasonable to assume that the sponsors of the prohibition, anticipating a like objection to the amendment for the fiscal year 1938, attempted to draft the prohibition in the language of an appropriation measure. But whatever the tactical purpose of the change in form, it is clear beyond doubt that no change in purpose or effect was intended.[6]

---

[6] Respondent's authorities (Br. in Opp. 7–8) are not even mildly persuasive. *United States* v. *Langston*, 118 U. S. 389, involved solely the failure to appropriate, in one year, the full amount of the compensation of a diplomatic salary; there were no other indications of any legislative intention to modify the prior law, or any evidence of a public purpose which the Congress might have intended to accomplish by such a change. The *Langston* case, this Court has observed, "expresses the limit in that direction" (*Belknap* v. *United States*, 150 U. S. 588, 595) and applies only to cases of a "mere omission to appropriate a sufficient sum." See *United States* v. *Valte*, 233 U. S. 509, 515. The *Valte* case does not support respondent's position. It merely held that a prohibition on the use of appropriation funds for two successive years did not constitute a permanent prohibition of the expenditure of funds appropriated in subsequent years without such restriction.

Archbald v. *United States*, 218 Fed. 270 (M. D. Pa.), like the *Langston* case, concerned merely a failure to appropriate. *Ewarin* v. *United States*, 37 Fed. 470, 478 (S. D.

CONCLUSION

For the reasons above stated, we respectfully submit that the judgment below is erroneous and should be reversed.

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APRIL 1940.

Ga.), and *United States* v. *Aldrich*, 58 Fed. 688, 689 (C. C. A. 1st), concern an appropriation Act which forbade use of the sum appropriated by that Act alone, and the court in each case expressly distinguished statutes which, like section 402, provide that "no part of any appropriation contained in this *or any other Act*" (italics supplied) is to be used for certain purposes. In *Bell* v. *United States*, 35 Fed. 889 (M. D. Ala.), the court merely rejected a contention that a general statute fixing the amount of fees was repealed permanently and rendered inapplicable in 1887 by a statute which limited the appropriation for 1886.

APPENDIX A

Act of June 10, 1922, c. 212, 42 Stat. 625, 629–630 (U. S. C., Title 10, sec. 633; Title 37, secs. 13, 16):

SEC. 9. * * * On and after July 1, 1922, an enlistment allowance equal to $50, multiplied by the number of years served in the enlistment period from which he has last been discharged, shall be paid to every honorably discharged enlisted man of the first three grades who reenlists within a period of three months from the date of his discharge, and an enlistment allowance of $25, multiplied by the number of years served in the enlistment period from which he has last been discharged, shall be paid to every honorably discharged enlisted man of the other grades who reenlists within a period of three months from the date of his discharge. * * *

SEC. 10.

* * * * * *

* * * Existing laws authorizing a reenlistment gratuity to enlisted men of the Navy and Coast Guard are hereby repealed, and an enlistment allowance equal to $50 multiplied by the number of years served in the enlistment period from which he has last been discharged, but not to exceed $200, shall be paid to every honorably discharged enlisted man of the first three grades who reenlists within a period of three months from the date of his discharge; and an enlistment allowance of $25 multiplied by

the number of years served in the enlistment period from which he has last been discharged, but not to exceed $100, shall be paid to every honorably discharged enlisted man of the other grades who reenlists within a period of three months from the date of his discharge. * * *

Public Resolution No. 122, June 21, 1938, c. 554, 52 Stat. 809, 818:

SEC. 402. For an additional amount for salaries and expenses of the Rural Electrification Administration, fiscal years 1938 and 1939, including the same objects and under the same conditions specified under this head in the Independent Offices Appropriation Act, 1939, including printing and binding, there is appropriated, out of any money in the Treasury not otherwise appropriated, the sum of $700,000: *Provided*, That no part of any appropriation contained in this or any other Act for the fiscal year ending June 30, 1939, shall be available for the payment of enlistment allowance to enlisted men for reenlistment within a period of three months from date of discharge as to reenlistments made during the fiscal year ending June 30, 1939, notwithstanding the applicable provisions of sections 9 and 10 of the Act entitled "An Act to readjust the pay and allowances of the commissioned and enlisted personnel of the Army, Navy, Marine Corps, Coast Guard, Coast and Geodetic Survey, and Public Health Service," approved June 10, 1922 (37 U. S. C. 13, 16).[1]

[1] The Act of May 28, 1937, c. 277, 50 Stat. 213, 232, contains language identical with that of the *proviso* to section 402, with the substitution of "fiscal year ending June 30, 1938" for "fiscal year ending June 30, 1939."

Act of March 3, 1933, c. 212, 47 Stat. 1489, 1519:

> SEC. 18. So much of sections 9 and 10 of the Act entitled "An Act to readjust the pay and allowances of the commissioned and enlisted personnel of the Army, Navy, Marine Corps, Coast Guard, Coast and Geodetic Survey, and Public Health Service," approved June 10, 1922 (U. S. C., title 37, secs. 13 and 16), as provides for the payment of enlistment allowance to enlisted men for reenlistment within a period of three months from date of discharge is hereby suspended as to reenlistments made during the fiscal year ending June 30, 1934.[2]

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[2] This section was continued in full force and effect for the fiscal years ending June 30, 1935, June 30, 1936, and June 30, 1937, by Section 24 of the Act of March 28, 1934, c. 102, 48 Stat. 509, 523, the Act of May 14, 1935, c. 110, 49 Stat. 218, 226–7, and the Act of June 23, 1936, c. 725, 49 Stat. 1827, 1837, respectively.

APPENDIX B

The following statutes are illustrative of instances where the Congress has undertaken to legislate through the medium of appropriation Acts:

Act of April 6, 1914, c. 52, 38 Stat. 312, 335, Sec. 5 (U. S. C., Title 5, sec. 55) (Payment of accountants).

Act of May 10, 1916, c. 117, 39 Stat. 66, 120, as amended by Act of August 29, 1916, c. 417, 39 Stat. 556, 582 (U. S. C., Title 5, secs. 58, 59) (Prohibition of payment of double salaries).

Rev. Stat. Sec. 1761, as amended by Public Res. of June 7, 1924, c. 377, 43 Stat. 669 (U. S. C., Title 5, sec. 56) (Prohibition of payment of salary to unconfirmed officials appointed during session of Congress).

Act of Oct. 22, 1913, c. 32, 38 Stat. 208, 212 (U. S. C., Title 5, sec. 54) (Prohibition of employment of publicity experts).

Rev. Stat. Sec. 1766, as amended by Act of June 10, 1921, c. 18, 42 Stat. 20, 23 (U. S. C., Title 5, sec. 82) (Prohibition of salary payments to debtors of the United States).

Act of July 1, 1937, c. 423, 50 Stat. 442, 446; Act of June 11, 1938, c. 347, 52 Stat. 642, 646 (limiting employment of aliens in military activities).

Act of June 16, 1937, c. 359, 50 Stat. 261, 265, Act of April 27, 1938, c. 180, 52 Stat. 248, 251 (limiting employment of aliens in American missions abroad).

Act of April 27, 1938, c. 180, 52 Stat. 248, 289, Act of May 23, 1938, c. 259, 52 Stat. 410, 435, Act of June 25, 1938, c. 681, 52 Stat. 1114, 1162 (limiting compensation of certain alien officers and employees of the United States).

Act of June 29, 1937, c. 404, 50 Stat. 395, 396, Act of June 16, 1938, c. 464, 52 Stat. 710, 711–712 (prohibition of payment of salary to Department of Agriculture officials and employees predicting future prices of cotton).

Act of April 27, 1938, c. 180, 52 Stat. 248, 289, Act of March 28, 1938, c. 55, 52 Stat. 120, 148, and other acts (prohibition of salary payments to officials whose nomination the Senate has rejected).

Act of June 16, 1937, c. 359, 50 Stat. 261, 263, Act of April 27, 1938, c. 180, 52 Stat. 248, 250 (prohibition of salary payments to foreign service officials receiving another salary from the United States).

Act of April 27, 1937, c. 140, 50 Stat. 96, 101 (prohibition of payments to naval reservists drawing a pension from the United States).

Act of July 1, 1937, c. 423, 50 Stat. 442, 462, (prohibition of payments, etc., to National Guard officers or men drawing a United States pension).

Act of July 1, 1937, c. 423, 50 Stat. 442, 464 (prohibition of payments, etc., to members of the Organized Reserves drawing pensions).

Act of April 27, 1937, c. 140, 50 Stat. 96, 115, Act of July 1, 1937, c. 423, 50 Stat. 442, 467, and many other acts (prohibition of payments to officials using time measuring devices in employees' work, etc.).

Act of June 28, 1937, c. 396, 50 Stat. 329, 344 (Social Security Board experts or attorneys receiving more than $5,000 annual salary to be confirmed by Senate).

Act of April 27, 1938, c. 180, 52 Stat. 248, 269 (Department of Justice attorneys to be admitted to the bar).

Act of April 27, 1938, c. 180, 52 Stat. 248, 264 (prohibition of salary payments to probation officers whose work falls below standards set by the Attorney General, etc.).

Act of June 16, 1937, c. 359, 50 Stat. 261, 278 (conciliation commissioners to be paid only one fee per case, and only after final disposition of the case).

Act of June 16, 1937, c. 359, 50 Stat. 261, 300, Act of April 27, 1938, c. 180, 52 Stat. 248, 286–287 (Secretary of Labor to expend less than authorized by existing law for enforcement of contract laborers act).

Act of June 29, 1937, c. 403, 50 Stat. 359, 363 (District of Columbia to insert legal advertisements less extensively than required by existing law).

Act of April 27, 1937, c. 140, 50 Stat. 96, 107 (limiting the number of midshipmen at the Naval Academy to a number less than required by existing law).

Act of July 1, 1937, c. 423, 50 Stat. 442, 464 (limiting active duty of Army reserve officers).

Act of April 27, 1938, c. 180, 52 Stat. 248, 269 (limiting a payment of witness, juror, and bailiff fees).

Act of April 27, 1938, c. 180, 52 Stat. 248, 268 (only one witness fee to be paid).

Act of April 27, 1938, c. 180, 52 Stat. 248, 268 (bailiffs only to be paid for work performed when marshals unavailable).

Act of July 1, 1937, c. 423, 50 Stat. 442, 446, Act of June 11, 1938, c. 347, 52 Stat. 642, 646 (no payments to retired Army officers connected with the sale of supplies to Army).

Act of July 1, 1937, c. 423, 50 Stat. 442, 447, Act of June 11, 1938, c. 347, 52 Stat. 642, 646 (no payments to Army officers or men connected with military journals accepting paid advertising of firms dealing with War Department).

Act of July 3, 1930, c. 848, 46 Stat. 949, 966, Act of February 23, 1931, c. 282, 46 Stat. 1376, 1391–1392 (no payments to public school officials soliciting funds without authorization from pupils).

Act of May 23, 1938, c. 259, 52 Stat. 410, 427 (no payments to Tariff Commission members interested in proceedings in which they participate).

Act of June 14, 1935, c. 241, 49 Stat. 341, 356 (no payments to District of Columbia teachers teaching or advocating communism).

Act of June 29, 1937, c. 401, 50 Stat. 352, 355, Act of June 21, 1938, c. 554, 52 Stat. 809, 813, Sec. 14 (no payments to relief officials participating in state or local elections).

Act of April 4, 1938, c. 62, 52 Stat. 156, 166, 171 (no payments on District of Columbia contracts not awarded to the lowest bidder, etc.).

Act of May 25, 1939, c. 149, Public No. 90, 76th Cong., 1st Sess., p. 7 (limiting number of instructors in the Naval Academy).

Act of June 16, 1939, c. 208, Public No. 130, 76th Cong., 1st Sess., p. 11 (requiring members of the Capitol Police Force to meet prescribed standards).

Act of June 29, 1939, c. 248, Public No. 156, 76th Cong., 1st Sess., p. 20 (requiring probation officers to meet certain prescribed standards).

Act of July 15, 1939, c. 281, Public No. 176, 76th Cong., 1st Sess., p. 6 (limiting legal advertisements of the District of Columbia "notwithstanding the requirement that such advertising provided by existing law").

Revised Statutes, section 5266 (U. S. C., Title 47, sec. 3) (no payments to any telegraph company neglecting or refusing to accord preference to Government telegrams).

Act of February 24, 1899, c. 187, 30 Stat. 846, 864, see U. S. C., Title 5, sec. 27 (forbidding use of recording clocks for recording time of Government employees).

APPENDIX C

Certain of the statutes listed in Appendix B provide as follows:

Act of October 22, 1913, c. 32, 38 Stat. 208, 212. (U. S. C., Title 5, sec. 54):

> No money appropriated by this or any other Act shall be used for the compensation of any publicity expert unless specifically appropriated for that purpose.

Act of April 6, 1914, c. 52, 38 Stat. 312, 335 (U. S. C., Title 5, sec. 55):

> SEC. 5. That no part of any money appropriated in this or any other Act shall be used for compensation or payment of expenses of accountants or other experts in inaugurating new or changing old methods of transacting the business of the United States or the District of Columbia unless authority for employment of such services or payment of such expenses is stated in specific terms in the Act making provision therefor and the rate of compensation for such services or expenses is specifically fixed therein, or be used for compensation of or expenses for persons, aiding or assisting such accountants or other experts, unless the rate of compensation of or expenses for such assistants is fixed by officers or employees of the United States or District of Columbia having authority to do so, and such rates of compensation or expenses so fixed shall be paid only to the person so employed.

Act of June 29, 1937, c. 403, 50 Stat. 359, 363:

> For general advertising, authorized and required by law, and for tax and school notices and notices of changes in regulations, $7,000: *Provided*, That this appropriation shall not be available for the payment of advertising in newspapers published outside of the District of Columbia, notwithstanding the requirement for such advertising provided by existing law.
>
> For advertising notice of taxes in arrears July 1, 1937, as required to be given by the Act of February 28, 1898, as amended, to be reimbursed by a charge of 50 cents for each lot or piece of property advertised, $5,500: *Provided*, That this appropriation shall not be available for the payment of advertising the delinquent tax list for more than once a week for two weeks in the regular issue of one morning or one evening newspaper published in the District of Columbia, notwithstanding the provisions of existing law.

Act of June 14, 1935, c. 241, 49 Stat. 341, 356:

> * * * *Provided*, That hereafter no part of any appropriation for the public schools shall be available for the payment of the salary of any person teaching or advocating Communism.

Act of June 16, 1938, c. 464, 52 Stat. 710, 711:

> * * * *Provided further*, That no part of the funds appropriated by this Act shall be used for the payment of any officer or employee of the Department of Agriculture who, as such officer or employee, or on behalf of the Department or any division, commission, or bureau thereof, issues, or causes to be issued, any prediction, oral or written, or forecast with respect to future prices of cotton or the trend of same: * * *

Act of July 1, 1937, c. 423, 50 Stat. 442, 446:

> No payment shall be made from money appropriated in this Act to any officer on the retired list of the Army who, for himself or for others, is engaged in the selling of, contracting for the sale of, or negotiating for the sale of, to the Army or the War Department, any war materials or supplies.

Act of April 27, 1937, c. 140, 50 Stat. 96, 107:

> * * * *Provided further,* That no part of this appropriation shall be available for the pay of any midshipmen whose admission subsequent to January 30, 1937, would result in exceeding at any time an allowance of four midshipmen for each Senator, Representative, and Delegate in Congress; of one midshipman for Puerto Rico, a native of the island, appointed on nomination of the Governor, and of four midshipmen from Puerto Rico, appointed on nomination of the Resident Commissioner; and of four midshipmen from the District of Columbia; * * *

Act of May 23, 1938, c. 259, 52 Stat. 410, 427:

> * * * *Provided further,* That no part of this appropriation shall be used to pay the salary of any member of the Tariff Commission who shall hereafter participate in any proceedings under sections 336, 337, and 338 of the Tariff Act of 1930, wherein he or any member of his family has any special, direct, and pecuniary interest, or in which he has acted as attorney or special representative.

U. S. GOVERNMENT PRINTING OFFICE : 1940

Supreme Court of the United States.

OCTOBER TERM, 1939.

No. 705.

THE UNITED STATES, PETITIONER,

v.

EMMETT F. DICKERSON.

Brief in Opposition to Petition for Writ of Certiorari.

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Of Counsel.

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Supreme Court of the United States.

OCTOBER TERM, 1939.

No. 705.

THE UNITED STATES OF AMERICA, *Petitioner*,

v.

EMMETT F. DICKERSON.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS.

OPINION BELOW.

The opinion of the Court of Claims (R. 3–9) is not yet officially reported.

JURISDICTION.

The judgment of the Court of Claims was entered November 6, 1939 (R. 9). The petition for Writ of Certiorari was filed February 6, 1940 (R. 9). The jurisdiction of this Court is invoked under Section 3 (b) of the Act of February 13, 1925, as amended.

QUESTION PRESENTED.

Whether Section 402 of Public Resolution No. 122 of June 21, 1938, c. 554, 52 Stat. 809, 818, operated as a *suspension* of the right of men reenlisting in the United States Army during the fiscal year ending June 30, 1939, to the enlistment allowance as provided by Section 9 of the Act of June 10, 1922, c. 212, 42 Stat. 625, 629–630.

STATUTES INVOLVED.

The pertinent portions of the statutes involved are set forth in Appendix A to the Petition for Writ of Certiorari (pages 14–16), to which reference is hereby made.

STATEMENT.

The statement of facts contained in the Petition for Writ of Certiorari (pages 2–3) fairly sets forth the facts of the case.

SUMMARY OF REASONS FOR DENYING THE WRIT.

The Writ of Certiorari should be denied because:

1. The case does not involve questions of sufficient public importance to justify its consideration by this Court.

2. The decision by the Court of Claims is correct and sound.

ARGUMENT.

1. The case does not involve questions of sufficient public importance to justify its consideration by this Court. The petitioner urges that the writ be granted because it asserts there is a large number of enlisted men who may make similar claims which would clog the dockets of the courts.

The existence of a large number of potential claimants is not a reason for granting the writ under Rule 38, paragraph 5, of this Court. There is no basis for the suggestion that the decision of the court below may result in the filing of a large number of suits clogging the dockets of the courts. There is just as much probability that such potential claims may be settled administratively if this Court denies the writ as if it grants the writ. The mere fact that a number of persons are affected is no indication that the decision by the Court of Claims is unsound.

The question involved has become moot except for those who reenlisted during the fiscal years 1938 and 1939. Since that time there has been no statutory prohibition upon the use of

existing appropriations for payment of the enlistment allowances and they are now being paid for all reenlistments after July 1, 1939.

The petitioner intimates that other appropriation Acts may be affected by the decision of the court below, but fails to explain how those Acts will be affected. If the several Acts referred to in Appendices B and C to the Petition for Writ of Certiorari (pages 17–21) are intended to illustrate this possibility, an examination of these statutes discloses that they do not presume to alter pre-existing statutory rights and consequently their effectiveness could not be impaired by the principles enunciated by the court below.

2. The decision by the court below is correct and sound.

The court below held that Section 402 of Public Resolution No. 122 (*supra*) did no more than limit the availability of money appropriated for payment of the enlistment allowance provided by Sections 9 and 10 of the Act of June 10, 1922 (*supra*). Petitioner urges, in substance, that Section 402 of Public Resolution No. 122 should have been construed as a "suspension" of those sections of the Act of June 10, 1922, solely because of its legislative history. The clear import of the language used in the Act does not create such a suspension.

Petitioner urges that an intent to "suspend" should be derived, not from the language of Section 402, but from the legislative history of a similar Act for the preceding fiscal year. In this connection it cites certain statements, made on the floor, by two individual members of Congress. No Committee Report was filed, and at most such statements can be accepted only as reflecting the individual opinion of those members and can not be held to represent the opinion of the entire membership of Congress.

It must also be emphasized that many conflicting statements were made by a number of members of Congress in connection with the Act here involved. Senator Byrnes, quoted by petitioner in its brief (page 7), in introducing a Committee Amendment to another appropriation Act, containing language

identical to that of the Act here involved, stated (83 Congressional Record 9189):

> "Mr. President, the amendment offered is solely a limitation as to funds, and is not legislation. It is a limitation upon the funds appropriated in the bill and does not change the existing law. * * *"

Senator Byrnes did, it is true, go on to say that the amendment, if adopted, would prohibit the filing of claims for the allowance by the men. However, other members of Congress did not agree with the Senator as is shown by the following statements made by the late Representative Bacon, who was a member of the Conference Committee, and Representative Wadsworth (83 Congressional Record 8556, 8567):

> "MR. BACON. It seems to me these enlisted men have an excellent case in the Court of Claims to recover from the Government on the contract.
>
> "MR. WADSWORTH. I am not lawyer enough to know about that, but I know in the interest of fair play this practice should be stopped. I know it is not the disposition of the Committee on Naval Affairs to bring in a bill abolishing reenlistment allowances, yet year after year we find tucked away in the back of a deficiency appropriation bill a provision to the effect that no moneys appropriated in any act of Congress in this particular session shall be used to pay these men the money the law says they shall have. * * *
>
> "MR. BACON: I quite agree with what the gentleman is saying, and I am convinced that the enlisted men of the Army, Navy, Marine Corps, and Coast Guard have grounds for a suit against the Government in the Court of Claims. I believe the four departments so concede and I hope the enlisted men bring that suit."

Enough of the legislative history of the Act here involved has been quoted to show that it sheds no light on the intention of Congress in enacting the Act. The legislative history of the Act simply consists of a large mass of conflicting statements and no clear intent to "suspend" can reasonably be derived from it.

Petitioner also seems to contend that some significance must attach to the fact that the provisions here involved were excluded as legislation from an appropriation bill. This is of no consequence whatsoever. The so-called Rural Electrification Act, which included the provision here involved limiting the use of the appropriation for the payment of this allowance, was passed as a part of the Work Relief and Public Works Appropriation Act of 1938 (c. 554, 52 Stat. 809). In fact the provision limiting the availability of certain appropriations for use in the payment of the enlistment allowance was first enacted in a Deficiency Appropriation Act for the fiscal year 1938 (c. 277, 50 Stat. 213, 232). Besides this, the fact that the provision may have been ruled out on a point of order is no proof that such provision had any effect other than merely making unavailable the use of the appropriations for the payment of reenlistment allowances. The test as to whether the amendment was an attempt to legislate in an appropriation Act is whether it changed existing law. At the time the proposed amendment was ruled out, the Act of June 10, 1922, creating the right to the allowance was in full force and had not been repealed or suspended for the fiscal year 1939. The Regular Army Appropriation Act had been passed (c. 347, 52 Stat. 642) and therefore under then existing law the enlistment allowances were payable and the Army appropriation Act for that year was available for their payment. This amendment merely rendered the appropriation unavailable and to that extent only changed then existing law and was therefore not proper in an appropriation Act if a point of order was interposed.

Even if it be assumed that the legislative history of the Act was clear, petitioner's contention that the meaning of the statute must be derived therefrom is fallacious. Petitioner fails to state anywhere that the meaning of the language of Section 402 is doubtful or that it is not clear. It obviously is clear and unambiguous. It plainly imposes a limitation upon the use of appropriations and nothing more. There is no language used in the statute which suspends the right to the allowance. This Court has repeatedly held that plain and unambiguous language requires no construction. *Insurance Co.* v. *Ritchie*, 5 Wall.

541, 545; *Boudinot (Cherokee Tobacco)* v. *United States*, 11 Wall. 616, 620; *Commissioner of Immigration* v. *Gottlieb*, 265 U. S. 310, 313. This principle precludes consideration of the legislative history of statutes in an effort to disclose an intent other than that naturally derived from the clear language of the statute. *United States* v. *Missouri Pacific R. Co.*, 278 U. S. 269, 278; *Wilbur* v. *United States, ex rel.*, 284 U. S. 231, 237; *Fairport, etc. Company* v. *Meredith*, 292 U. S. 589, 594; *Kuehner* v. *Irving Trust Co.*, 299 U. S. 445, 449. Legislative history of an Act as an aid to the construction of an Act is only admissible to solve doubt and not to create it. *Wisconsin R. R. Commission* v. *Chicago, etc., R. R. Co.*, 257 U. S. 563, 589. Nor are the words of a statute to be altered in the interest of the imagined intent. *United States* v. *Riggs*, 203 U. S. 136, 139.

It must also be emphasized that the court below properly attached considerable significance to the fact that Congress in enacting the Act here involved radically departed from the plain language it had used for several years in the Acts expressly "suspending" for the fiscal years 1934–1937, the operation of Sections 9 and 10 of the Act of June 10, 1922. The petitioner, without offering any explanation for this significant change of language, would have this Court place a meaning upon the Act here involved identical to that of the Acts for the fiscal years 1934–1937 and contrary to the plain meaning of the words used in the statute here involved. This contention ignores the many decisions of this Court holding that a change of language clearly shows a change of intent. *United States* v. *Fisher*, 2 Cr. 358 (1 Dall. 421, 424); *Pirie* v. *Chicago Title & Trust Co.*, 182 U. S. 438, 448; *Brewster* v. *Gage*, 280 U. S. 327, 337. Construction obviously can not make identical that which is radically different. *Pennsylvania R. R. Co.* v. *International Coal Mining Co.*, 230 U. S. 184, 199.

The decision of the court below is not in conflict with applicable decisions of this Court. The court below held that the meaning of Section 402 is clear, and that it did no more than limit the availability of appropriations for the payment of the enlistment allowances. Therefore, it operated as a limitation

upon the authority of administrative officers to pay the allowances and did not operate as a repeal, modification or suspension of the basic right created by the Act of June 10, 1922. This Court has recognized that the failure or refusal of Congress to appropriate does not result in the repeal, modification or suspension of an earlier permanent pay statute in the absence of language so providing or language clearly implying such a result. *United States* v. *Langston*, 118 U. S. 389; *United States* v. *Vulte*, 233 U. S. 509. *Cf. United States* v. *Minis*, 15 Pet. 423, 445.

In the cases of *Mathews* v. *United States*, 123 U. S. 182; *Wallace* v. *United States*, 133 U. S. 480; *Dunwoody* v. *United States*, 143 U. S. 578, and *Belknap* v. *United States*, 150 U. S. 588, cited by petitioner (page 12), this Court specifically recognized the principle of the *Langston* case, *supra*, but in each of them distinguishing facts precluded application of the rule and prevented recovery by the plaintiff. Similarly, in the case of *United States* v. *Mitchell*, 109 U. S. 146, while it was decided prior to the *Langston* case, *supra*, this Court recognized the principle later announced in the *Langston* case, but the facts in the *Mitchell* case precluded recovery by the plaintiff.

The principle of the *Langston* case, *supra*, has been applied and the plaintiff has been granted a recovery for a statutory salary or allowance despite the failure or refusal of Congress to appropriate funds for payment of it in the following cases in the Federal courts: *Bell* v. *United States*, 35 Fed. 889 (M. D. Ala., 1887), where a United States Commissioner was held entitled to docket fees as fixed by the Revised Statutes, notwithstanding the inadequacy of the appropriation made therefor; *Erwin* v. *United States*, 37 Fed. 470 (S. D. Ga. 1889), where a clerk of the court was held entitled to the per diem allowance provided by the Revised Statutes; *United States* v. *Aldrich*, 58 Fed. 688 (C. C. A. 1st, 1893), where the Circuit Court made a similar ruling; and *Archbald* v. *United States*, 218 Fed. 270 (M. D. Pa. 1914), where a judge of the Commerce Court was held entitled to the expense allowance provided by the Act creating the court, notwithstanding the failure of Congress to appropriate funds to pay the allowance.

The Court of Claims has likewise recognized the principle in the cases of *Graham* v. *United States*, 1 C. Cls. 380; *Collins* v. *United States*, 15 C. Cls. 22; *Geddes* v. *United States*, 38 C. Cls. 428; *Strong* v. *United States*, 60 C. Cls. 627, and other similar cases. The case of *Geddes* v. *United States*, *supra*, invites particular attention, for there the effect of a *proviso* to an appropriation Act containing language substantially similar to that here involved is fully discussed, and held not to affect a right created by an earlier statute.[1]

CONCLUSION.

It is respectfully submitted that, for the reasons stated, this petition for a writ of certiorari should be denied.

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GEORGE R. SHIELDS.
JOHN W. GASKINS,
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Of Counsel.

March, 1940.

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[1]Reference is made in foot-note on page 11 of petitioner's brief to the case of *Strauss* v. *United States*, decided by the Court of Claims on January 8, 1940, and not yet officially reported. While the court cited the decision in the present case as authority for its decision, it did not rely specifically upon it, as stated by the petitioner. Instead it also cited *United States* v. *Langston*, 118 U. S. 389; *Miller* v. *United States*, 86 C. Cls. 609; and *Geddes* v. *United States*, 38 C. Cls. 428. The soundness of the court's decision is indicated by the fact that the Government submitted the case without argument, and cited no authority whatsoever in the brief filed in defense of the case.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1939.

No. 705.

THE UNITED STATES, PETITIONER,

v.

EMMETT F. DICKERSON.

On Writ of Certiorari to the Court of Claims.

BRIEF FOR RESPONDENT.

HERMAN J. GALLOWAY,
Attorney for Respondent.

GEORGE R. SHIELDS,
JOHN W. GASKINS,
FRED W. SHIELDS,
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BRIEF FOR RESPONDENT.

Opinion Below.

The opinion of the Court of Claims (R. 3–9) is not yet officially reported.

Jurisdiction.

The judgment of the Court of Claims was entered November 6, 1939 (R. 9). The petition for a writ of certiorari was filed February 6, 1940 (R. 9), and granted March 25, 1940 (R. 10). The jurisdiction of this Court rests upon Section 3 (b) of the Act of February 13, 1925, as amended.

The Question.

Whether Section 402 of Public Resolution 122 of June 21, 1938 (*infra*, p. 14) suspends the right to the enlistment allowance payable under Section 9 of the Act of June 10, 1922 (*infra*, p. 14) to men reenlisting in the military forces of the United States during the fiscal year ending June 30, 1939.

Statutes Involved.

The applicable portions of the statutes involved are set forth in the Appendix hereto (pp. 14–15).

The Facts.

The petitioner in its brief (pp. 2, 3) has accurately stated the facts.

Summary of Argument.

The proviso to Section 402 of Public Resolution No. 122 is written in clear and certain language and its meaning is unmistakable. There is no doubt as to its meaning. There is no reason to resort to rules of statutory construction. In simple language that proviso prohibits the use of appropriations for the fiscal year ending June 30, 1939, for the payment of the enlistment allowance to men reenlisting in that fiscal year. It does nothing more. It does not suspend the right to the allowance. But even if resort is had to the rules of statutory construction, their application would not result in the suspension of the right to the allowance.

Argument.

The opinion of the Court of Claims is clear and convincing. It is based upon sound reasoning and logic. It is well supported by authorities. Little need be added to what the Court said in that opinion and it should be affirmed by this Court.

As pointed out by the Court of Claims in its opinion, from 1854 to 1933, enlisted men of the Army were paid the enlistment allowance in one form or another (R. 4). By the basic pay Act of June 10, 1922, Congress enacted permanent legislation creating the right to the allowance in its present form. Thereafter the allowance was paid from annual lump sum appropriations for the "Pay and so forth of the Army" (R. 5) until by Section 18 of the Act of March 3, 1933 (*infra*, p. 15), so much of the Act of June 10, 1922, as provided for the payment of the allowance was "suspended" as to reenlistments during the fiscal year ending June 30, 1934.

By separate statutes this right to the allowance was "suspended" as to reenlistments during the fiscal year ending June 30, 1935 (by Act of March 28, 1934, c. 102, 48 Stat. 509, 523); the fiscal year ending June 30, 1935 (by Act of May 14, 1935, c. 110, 49 Stat. 218, 226–227); and for the fiscal year ending June 30, 1937 (by the Act of June 23, 1936, c. 725, 49 Stat. 1827, 1837).

By the Act of May 28, 1937 (c. 277, 50 Stat. 213, 232), Congress departed from its practice of suspending the right to such allowance and provided instead that no part of any appropriation for the fiscal year ending June 30, 1938, should be available for the payment of the enlistment allowance for reenlistments during that fiscal year. By Section 402 of Public Resolution No. 122 (*infra*, pp. 14, 15), identical provisions were made applicable for the fiscal year ending June 30, 1939. No restrictions were enacted for the fiscal year ending June 30, 1940, and the allowance is now being paid under the Act of June 10, 1922, as to reenlistments, since June 30, 1939.

The Words of the Statute Are Clear and Unambiguous and No Construction is Required.

The proviso to Section 402 of Public Resolution No. 122 simply states that "no part of any appropriation contained in this or any other Act for the fiscal year ending June 30, 1939, shall be available for the payment" of any enlistment allowance as to "reenlistments made during the fiscal year ending June 30, 1939, notwithstanding the applicable provisions of Sections 9 and 10" of the Act of June 10, 1922.

For the fiscal years 1934 to 1938, Congress had each year, in positive and precise language, "suspended" the provisions of the Act of June 10, 1922, which created the right to the allowance. But in the fiscal years 1938 and 1939, Congress did not "suspend" the right. It chose other certain and unambiguous words to express what it did. These words have a clear and well-known meaning. That meaning must be followed. The courts have no right to add terms to such clear and simple words. The proviso does no more than prohibit administrative

officers from using existing appropriations for the payment of the allowance. Such limited application could not be more clearly stated than by the simple language Congress has used to express it. In these circumstances it is not the province of the courts to place thereon a meaning or construction which increases the limitation imposed by the words used in the statute. Instead it is their duty to seek the meaning of the statute from the language in which it is framed and where that language is plain to enforce it according to its terms. *Caminetti* v. *United States*, 242 U. S. 470, 485. Accordingly, this Court has consistently held that no construction will be resorted to where the language is plain and unambiguous. *Insurance Company* v. *Ritchie*, 5 Wall. 541, 545; *Boudinot (Cherokee Tobacco)* v. *United States*, 11 Wall. 616, 620; *United States* v. *Lexington Mill Co.*, 232 U. S. 399, 409–410; *Commissioner of Immigration* v. *Gottlieb*, 265 U. S. 310, 313.

The petitioner would have the Court place a construction on the statute here involved which would add limitations not expressed in the plain language of the statute itself. This Court has held that where a law is expressed in plain and unambiguous terms the legislature should be presumed to mean what they have plainly expressed. *United States* v. *Lexington Mill Co.*, 232 U. S. 399, 409–410. To impute to the legislature an intent beyond the scope of the language used is to exercise a legislative rather than a judicial function, which this Court has consistently refused to do. Where such an attempt was made it was held that the Court's province was to declare what the law was, and not, under the guise of interpretation or under the influence of what might be surmised to be the policy of the Government, to adjudge that to be law which Congress did not enact as such. *Dewey* v. *United States*, 178 U. S. 510, 521. So strictly has this been adhered to by the Court that an effort to include, by construction, an inadvertent omission was characterized as an "enlargement" of the statute, which transcended the judicial function of the Court. *Iselin* v. *United States*, 270 U. S. 245, 251, cited with approval in *Wallace* v. *Citten*, 298 U. S. 229, 237. The words of a statute will not be altered in the interest of an imagined intent. *United States* v. *Riggs*, 203 U. S. 136, 139.

Petitioner apparently relies upon what it contends is the legislative history of the Act. The decisions by this Court preclude consideration of legislative history to disclose an intent other than that naturally derived from the clear language of the statute. *United States* v. *Missouri Pacific R. R. Co.*, 278 U. S. 269, 278; *Wilbur* v. *United States, ex rel*, 284 U. S. 231, 237; *Fairport, etc., Co.* v. *Meredith*, 292 U. S. 589, 594; *Keuhner* v. *Irving Trust Co.*, 299 U. S. 445, 449.

The legislative history of an Act as an aid to its construction is only admissible to solve doubt, and not to create it. *Wisconsin R. R. Commission* v. *Chicago, Etc. R. R. Co.*, 257 U. S. 563, 589.

The words of the proviso to Section 402 of Public Resolution No. 122 are simple and definite. Their meaning is clear and unambiguous. There is no room for construction. Nothing should be added to or taken from the Act to alter its clear and positive meaning. There should be no resort to the legislative history to create an imagined uncertainty where from the plain words of the statute no uncertainty exists. The Act does not suspend the right to the enlistment allowance. Congress refused to again suspend this right but imposed only a limitation upon administrative officers in the use of appropriations for the fiscal year ending June 30, 1939. The language used by Congress can not be interpreted as destroying the basic right created by the Act of June 10, 1922. The decision of the Court of Claims is sound and should be affirmed.

Even Resorting to the Rules of Construction the Decision of the Court of Claims Should be Affirmed.

The petitioner contends that the proviso to Section 402 of Public Resolution No. 122 suspends the right to the enlistment allowance. As heretofore pointed out, Congress had by separate acts during each of the fiscal years ending June 30, 1934, June 30, 1935, June 30, 1936, and June 30, 1937, "suspended" so much of the Act of June 10, 1922, as provided for the payment of the enlistment allowance for reenlistments during those fiscal years. Congress used the word "suspended"

to accomplish the suspension. By separate Acts applicable to the fiscal years ending June 30, 1938, and June 30, 1939, Congress departed from the use of the word "suspended." Instead it changed to other simple and well understood words, which, given their clear and natural meaning, do not suspend the right, but merely prohibit the administrative officers of the Government from using the appropriations for those fiscal years for the payment of the allowance. It is a familiar rule of construction that such a change in language necessarily implies a change of intent. Congress changed the language, thereby departing from its prior suspension of the right to the allowance.

In *United States* v. *Fisher*, 2 Cr. 358 (1 Dallas, 421), which involved an interpretation of bankruptcy statutes, Marshall, C. J., said, p. 424:

"*This change of language strongly implies an intent to change the object of legislation.*" (Italics supplied.)

In *Pirie* v. *Chicago Title & Trust Co.*, 182 U. S. 438, which likewise involved a bankruptcy statute, the court said, p. 448:

"When the purpose of a prior law is continued usually its words are, and an omission of the words implied an omission of the purpose. This rule we lately applied in *Bardes* v. *First National Bank of Hawarden*, 178 U. S. 524."

In *Crawford* v. *Burke*, 195 U. S. 176, the court said, p. 190:

"Our own view, however, is that a change in phraseology creates a presumption of a change in intent, and that Congress would not have used such different language in section 17 from that used in section 33 of the act of 1867, without thereby intending a change of meaning."

In *Brewster* v. *Gage*, 280 U. S. 327, a case involving the interpretation of estate tax statutes, the court said, p. 337:

"The deliberate selection of language so differing from that used in the earlier Acts indicates that a change of law was intended."

Equally important is the rule of statutory construction that the intent of Congress is to be gained from the language used in the statute, giving such language its usual and ordinary sense and meaning. *United States* v. *First National Bank*, 234 U. S. 245, 258; *Caminetti* v. *United States*, 242 U. S. 470, 485. As heretofore shown, the words of the proviso to Section 402 of Public Resolution No. 122 are clear and unambiguous. The language is simple and positive. It contains no suspension of the right to the allowance. To create a suspension, words would have to be added to the statute.

There is no express suspension in the proviso to Section 402. Neither suspensions nor repeals by implication are favored by the law. *United States* v. *Langston*, 118 U. S. 389, 393–394. This Court has consistently held that repeals by implication are not favored and a later statute will not be held to repeal an earlier one by implication unless such a presumption is absolutely necessary. *Cope* v. *Cope*, 137 U. S. 682, 686; *Ward* v. *Race Horse*, 163 U. S. 504, 511.

If effect can be given both statutes, the presumption is that the earlier is intended to remain in force. *United States* v. *Burroughs*, 289 U. S. 159. A repeal by implication will not be held to exist if there can be any other reasonable construction of the statute. *Ex parte Webb*, 225 U. S. 663, 683.

As opposed to the clear, simple and unambiguous language of the proviso to Section 402 and as opposed to all of the applicable rules of statutory construction, petitioner asserts that the legislative history of the proviso shows that Congress intended to suspend the right to the enlistment allowance for the fiscal years 1938 and 1939.

The respondent contends, First, that even if the legislative history shows (and it does not) that Congress did intend to suspend the right to the allowance, the legislative history can not override the plain, simple and unambiguous terms of the statute. Second, that the legislative history does not in fact show that Congress intended to continue the suspension of the right to the enlistment allowance.

The resort to legislative history in an effort to determine the meaning of a statute is only one of the guides to aid in its con-

struction. It has been heretofore shown that the proviso to Section 402 is clear and unambiguous and that in such case there is no reason to resort to any of the rules of construction to explain the statute. The Court will look to the clear terms of the statute itself. It should not resort to the rules of construction to create an imagined uncertainty or ambiguity that does not exist in the statute itself.

It has also been heretofore pointed out that all the other applicable rules of statutory construction point to the irresistible conclusion that Congress did not intend to suspend the right to the allowance for the fiscal years ending June 30, 1938, and June 30, 1939. These rules should override the legislative history even if we assume that such history shows that Congress did in fact intend to suspend such allowance. This Court has been very careful in resorting to the legislative history to determine the meaning of a statute. It has refused to do so where the language is clear and unambiguous. *Pennsylvania R. Co.* v. *International Mining Co.*, 230 U. S. 184, 198-199; *McKenzie* v. *Hare*, 239 U. S. 299, 307-308. When it has resorted to legislative history it has not been disposed to go beyond the reports of the committees. *Lapina* v. *Williams*, 232 U. S. 78, 90. Here the petitioner relies upon the remarks made by members of Congress on the floor of the Senate and the House, and upon what petitioner imagines was the strategical reason which some members of Congress may have had for refusing to use apt and clear language to effect the suspension of the right to the allowance. This is not true legislative history. This Court has often said that the remarks made by members of the House and Senate can not be used to determine the meaning of a statute. *Duplex Printing Co.* v. *Deering*, 254 U. S. 443, 474; *United States* v. *Freight Association*, 166 U. S. 290, 318. It hardly needs any argument to establish that this Court will not accept petitioner's conjecture as to the reasons of strategy that may have impelled Congress to abandon the use of the word "suspended." Such conjecture is not sufficient reason for the conclusion that Congress intended, by the use of entirely different words, to continue the suspension.

Even if we examine what was said by various members of

Congress upon this question, it does not establish that Congress intended that the rights to the allowance should be suspended.

Petitioner, at pages 10 and 11 of its brief, quotes certain statements made by Senator Byrnes. Other statements made by him are again quoted by petitioner in a note at page 15 of its brief. Petitioner failed to quote what Senator Byrnes said immediately preceding that portion quoted on page 15 of its brief. Introducing an amendment to an appropriation act, which amendment is identical to the language of the proviso to Section 402 of Public Resolution 122, Senator Byrnes said (83 Cong. Rec. 9189):

"Mr. President, the amendment offered is solely a limitation as to funds, and is not legislation. It is a limitation upon the funds appropriated in the bill and does not change existing law."

Clearly, Senator Byrnes was right when he said that the provision was only a limitation upon the availability of funds, but he was wrong in his legal conclusion that it would prevent recovery in the Court of Claims. A law is not changed by a mistaken opinion which the legislature, much less any individual legislator, may have had concerning its legal effect. *Postmaster General* v. *Early*, 12 Wheat. 136, 148.

The Government also quotes from remarks made by Mr. Woodrum on the floor of the House of Representatives (petitioner's brief, p. 13). These statements may express Mr. Woodrum's views upon such matters, but other members of Congress did not agree with him, as is demonstrated by the following colloquy between Mr. Bacon (who was a member of the Conference Committee considering the pending bill) and Mr. Wadsworth (83 Cong. Rec. 8556, 8567):

"*Mr. Bacon.* It seems to me these enlisted men have an excellent case in the Court of Claims to recover from the Government on the contract.

"*Mr. Wadsworth.* I am not lawyer enough to know about that, but I know in the interest of fair play this practice should be stopped. I know it is not the disposition of the Committee on Naval Affairs to bring in a bill abolishing reenlistment allow-

ances, yet year after year we find tucked away in the back of a deficiency appropriation bill a provision to the effect that no moneys appropriated in any act of Congress in this particular session shall be used to pay these men the money the law says they shall have. * * *

"*Mr. Bacon.* I quite agree with what the gentleman is saying, and I am convinced that the enlisted men of the Army, Navy, Marine Corps, and Coast Guard have grounds for a suit against the Government in the Court of Claims. I believe the four departments so concede and I hope the enlisted men bring that suit."

These questions were debated at various times in the House and the Senate. Some members wanted the allowance paid. Others wanted to postpone payment. The identical words used in the proviso to Section 402 of Public Resolution No. 122 were discussed under various statutes affecting each of the fiscal years ending June 30, 1938, and June 30, 1939. It is true that some members said that it continued the same situation that existed in prior years; but other members disagreed with them. Some members felt that this would prevent a suit in the Court of Claims. Other members said that under this same proviso the enlisted men could sue and recover in the Court of Claims. Can this, or any other Court, in any such situation, say that all, or even a majority, of the members of either House agreed with one side or the other upon this question? A majority may have agreed with those who said that if this proviso was passed the allowance could be recovered in the Court of Claims and therefore voted for the proviso. There is nothing to show that this was not the case. This fully demonstrates the wisdom of the rule announced by this Court that the remarks by members of Congress are not safe guides to the intent of Congress. This does not establish legislative history. As was said by this Court in *United States* v. *Freight Association*, 166 U. S. 290, 318,

"All that can be determined from the debates and reports is that various members had various views, and we are left to determine the meaning of this Act, as we determine the meaning of other Acts, from the language used therein."

Certainly, in such circumstances, it can not be said that Congress intended that the right to the allowance was thereby "suspended" and that the men could not recover such allowance in the Court of Claims.

Petitioner suggests that Congress no doubt abandoned the use of the word "suspended" for reasons of strategy. This almost charges certain members of Congress with a deception. Congress specifically had used the word "suspended" for the four preceding years. We have no right, in the absence of something indicating such a purpose, to charge that Congress still intended to suspend the right to this allowance, but hid its true meaning in other simple and clear words, which in their ordinary and natural meaning created no suspension. To so disguise their intent would be to deceive the other members of Congress. This Court will not follow any such supposed legislative history as against the clear and unambiguous meaning of the words used and also as opposed to all of the other applicable rules of statutory construction.

The Government argues at length (brief, pp. 9 and 10, and note on p. 16) that the suspension or modification could have been made by provisions in appropriation Acts, and that Congress can legislate in such Acts. Respondent does not contend that this can not be done had Congress seen fit to do so, and had actually done so by clear language. But in this case Congress did not suspend the right to the allowance. From 1933 to 1937 by express terms Congress had "suspended" the right by inserting appropriate provisions in appropriation Acts, and the validity of such suspension has not been questioned; but in 1938 and 1939 Congress did not see fit to continue that suspension.

As a last and desperate argument, the Government suggests (brief, p. 8 and note p. 9) that the Comptroller General advises that there are approximately 100,000 similar claims for the fiscal years 1938 and 1939. While respondent does not understand how such a fact (if it is a fact) is before this Court for consideration, it is submitted that it has absolutely no bearing upon the merits of the case. Respondent fully believes that if 100,000 persons have been wronged by the Government, this Court will

quickly act to bring real relief instead of hesitating to act because of the large number affected, or the fact that it may cost the Government a substantial sum of money.

Petitioner says (brief, pp. 7, 8) that the obvious purpose of the restriction was to reduce expenditures during a period of economic crisis. In 1933, when Congress expressly "suspended" the right to payment of the enlistment allowance, it was then engaged in an economy program, and made many reductions in the salaries of Government employees, as well as in other expenditures. Before 1937 when Congress ceased to suspend the right and merely provided that the appropriations for those fiscal years should not be available for the payment of the enlistment allowance, it was not engaged in any economy program, but in those years provided for large expenditures of every kind. Long before that time it had restored every reduction in salaries which it had made in its economy program of 1933. There is no reason to presume that in 1937 and 1938 Congress was any longer engaged in any economy program. If anything, we are led to believe by the remarks of Mr. Woodrum that Congress merely wished to postpone the payment of this allowance, because to include it was not in accordance with the program of the budget for that year. 81 Congressional Record 5091.

Conclusion.

From the foregoing discussion it is apparent that the Congress did not suspend the operation of Section 9 of the Act of June 10, 1922 for the fiscal year 1939. Instead it only limited the availability of appropriations for payment of the allowance as to reenlistments made during that year.

It is well established that recovery may be had where Congress has failed to appropriate all the amount provided as compensation for an officer under the basic law, or where there was a failure to appropriate any money for pay provided for in earlier permanent legislation. *United States* v. *Langston*, *supra*; *United States* v. *Vulte*, 233 U. S. 509; *Graham* v. *United States*, 1 C. Cls. 380; *Geddes* v. *United States*, 38 C. Cls. 428; *Miller* v. *United States*, 86 C. Cls. 609.

Particular attention is directed to the *Geddes* case, *supra*. There the question arose whether a retired army officer, who also held employment as a clerk in the Department of Agriculture, was prohibited from receiving his retired pay as such officer, as fixed by an earlier permanent statute, by the limitation in the Act of March 3, 1885 (c. 338, 23 Stat. 353, 356), which provided.

"That no part of the money herein or hereafter appropriated for the Department of Agriculture shall be paid to any person, as additional salary or compensation, receiving at the same time other compensation as an officer or employee of the Government.".

The Court of Claims held that the limitation extended only to the accounting officers of the Government, and did not affect plaintiff's right to either his retired pay or salary as a clerk of the Department of Agriculture. No appeal from the court's decision was taken by the Government.

The judgment below is correct and should be affirmed.

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Of Counsel.

APPENDIX.

Act of June 10, 1922, c. 212, 42 Stat. 625, 629–630 (U. S. C., Title 10, sec. 633; Title 37, secs. 13, 16):

SEC. 9. * * * On and after July 1, 1922, an enlistment allowance equal to $50, multiplied by the number of years served in the enlistment period from which he has last been discharged, shall be paid to every honorably discharged enlisted man of the first three grades who reenlists within a period of three months from the date of his discharge, and an enlistment allowance of $25, multiplied by the number of years served in the enlistment period from which he has last been discharged, shall be paid to every honorably discharged enlisted man of the other grades who reenlists within a period of three months from the date of his discharge. * * *

SEC. 10.

* * * Existing laws authorizing a reenlistment gratuity to enlisted men of the Navy and Coast Guard are hereby repealed, and an enlistment allowance equal to $50 multiplied by the number of years served in the enlistment period from which he has last been discharged, but not to exceed $200, shall be paid to every honorably discharged enlisted man of the first three grades who reenlists within a period of three months from the date of his discharge; and an enlistment allowance of $25 multiplied by the number of years served in the enlistment period from which he has last been discharged, but not to exceed $100, shall be paid to every honorably discharged enlisted man of the other grades who reenlists within a period of three months from the date of his discharge. * * *

Public Resolution No. 122, June 21, 1938, c. 554, 52 Stat. 809, 818:

SEC. 402. For an additional amount for salaries and expenses of the Rural Electrification Administration, fiscal years 1938 and 1939, including the same objects and under the same conditions specified under this head in the Independent Offices Appropriation Act, 1939, including printing and binding, there is appropriated, out of any money in the Treasury not otherwise appropriated the sum of $700,000: *Provided*, That no part of any appro-

priation contained in this or any other Act for the fiscal year ending June 30, 1939, shall be available for the payment of enlistment allowance to enlisted men for reenlistment within a period of three months from date of discharge as to reenlistments made during the fiscal year ending June 30, 1939, notwithstanding the applicable provisions of sections 9 and 10 of the Act entitled, "An Act to readjust the pay and allowances of the commissioned and enlisted personnel of the Army, Navy, Marine Corps, Coast Guard, Coast and Geodetic Survey, and Public Health Service," approved June 10, 1922 (37 U. S. C. 13, 16).[1]

Act of March 3, 1933, c. 212, 47 Stat. 1489, 1519:

SEC. 18. So much of sections 9 and 10 of the Act entitled "An Act to readjust the pay and allowances of the commissioned and enlisted personnel of the Army, Navy, Marine Corps, Coast Guard, Coast and Geodetic Survey, and Public Health Service," approved June 10, 1922, U. S. C., title 37, secs. 13 and 16), as provides for the payment of enlistment allowance to enlisted men for reenlistment within a period of three months from date of discharge is hereby suspended as to reenlistments made during the fiscal year ending June 30, 1934.[2]

[1] The Act of May 28, 1937, c. 277, 50 Stat. 213, 232, contains language identical with that of the *proviso* to section 402, with the substitution of "fiscal year ending June 30, 1938" for "fiscal year ending June 30, 1939."

[2] This section was continued in full force and effect for the fiscal years ending June 30, 1935, June 30, 1936, and June 30, 1937, by Section 24 of the Act of March 28, 1934, c. 102, 48 Stat. 509, 523, the Act of May 14, 1935, c. 110, 49 Stat. 218, 226-7; and the Act of June 23, 1936, c. 725, 49 Stat. 1827, 1837, respectively.

SUPREME COURT OF THE UNITED STATES.

No. 705.—Oc OBER TERM, 1939.

The United States, Petitioner,
vs.
Emmett F. Dickerson.

On Writ of Certiorari to the Court of Claims.

[May 27, 1940.]

Mr. Justice MURPHY delivered the opinion of the Court.

The question is whether respondent, Dickerson, may recover a judgment against the United States upon a cause of action founded upon Section 9 of the Act of June 10, 1922 [c. 212, 42 Stat. 625, 629-630].

Section 9 provides that after the 1st of July, 1922, an enlistment allowance shall be paid "to every honorably discharged enlisted man . . . who reenlists within a period of three months from the date of his discharge". Respondent, who was honorably discharged upon the termination of an enlisted period ending on the 21st of July, 1938, reenlisted on the following day, the 22nd, for a period of three years, but was not paid an enlistment allowance. He thereupon brought this action in the Court of Claims. It is conceded that Section 9, if not repealed or suspended at the date of his reenlistment, would entitle him to the sum of seventy-five dollars.

The Government opposed the action before the Court of Claims on the ground that Section 402 of Public Resolution No. 122, June 21, 1938 [c. 554, 52 Stat. 809, 818-819], suspended the allowance for reenlistment during the fiscal year ending June 30, 1939. Section 402 contains a proviso, appended to an appropriation for the Rural Electrification Administration, that "no part of any appropriation contained in this or any other Act for the fiscal year ending June 30, 1939, shall be available for the payment" of any enlistment allowance for "reenlistments made during the fiscal year ending June 30, 1939, notwithstanding the applicable portions of sections 9 and 10" of the Act of June 10, 1922.

The Court of Claims entered judgment for respondent on the ground that Section 402, while it restricted the funds available for

payment of the allowance, did not suspend or repeal Section 9. Because of the importance of the issue in the administration of the revenues, we granted certiorari. March 25, 1940.

There can be no doubt that Congress could suspend or repeal the authorization contained in Section 9; and it could accomplish its purpose by an amendment to an appropriation bill, or otherwise. *United States* v. *Mitchell*, 109 U. S. 146, 150; *Mathews* v. *United States*, 123 U. S. 182; *Dunwoody* v. *United States*, 143 U. S. 578; *Belknap* v. *United States*, 150 U. S. 588, 598; *United States* v. *Valte*, 233 U. S. 509, 515. See *United States* v. *Langston*, 118 U. S. 389. The question remains whether it did so during the fiscal year ending on the 30th of June, 1939.

Section 9 remained in full force and effect during the eleven fiscal years ending on the 30th of June, 1923 to 1933, after which date it was suspended during the ensuing four fiscal years by a provision inserted in various appropriation acts. Section 18 of the Economy Act of March 3, 1933 [c. 212, 47 Stat. 1489, 1519] provided that "So much of sections 9 and 10 of the Act . . . approved June 10, 1922 . . . as provides for the payment of enlistment allowances to enlisted men for reenlistment within a period of three months from date of discharge is hereby suspended as to reenlistments made during the fiscal year ending June 30, 1934." This provision, which concededly suspended the authorization for the enlistment allowance, was continued in full force and effect for the fiscal years ending on the 30th of June, 1935, 1936 and 1937, by its insertion in the Economy Provisions of the Independent Office Appropriation Act for the fiscal year 1935 and in the Treasury-Post Office Appropriation Acts for the fiscal years 1936 and 1937.[1]

The Second Deficiency Appropriation Bill of May 28, 1937 [c. 277, 50 Stat. 213, 232] also contained a provision affecting the enlistment allowance, but the form of words used was changed. That Act as passed by Congress provided that "no part of any appropriation contained in this or any other Act for the fiscal year ending June 30, 1938, shall be available for the payment of enlistment allowance to enlisted men for reenlistment within a period of three months from date of discharge as to reenlistments made during the fiscal year ending June 30, 1938, notwithstanding the applicable provisions of sections 9 and 10 of the Act" approved June 10, 1922.

[1] c. 102, 48 Stat. 509, 523; c. 110, 49 Stat. 218, 226-227; c. 725, 49 Stat. 1827, 1837.

The identical provision, with the exception of the dates, was appended as a proviso to Section 402 of Public Resolution 122, copied above, and was made applicable during the fiscal year ending on the 30th of June, 1939.

The provision inserted in the Second Deficiency Appropriation Bill for 1937 was introduced on the floor of the Senate as an amendment by Senator Byrnes. In response to questions concerning the amendment, the Senator stated (81 Cong. Rec. 4426):

". . . the language of the amendment has been carried ordinarily in the Treasury and Post Office Appropriation Bill, but was not carried in that appropriation bill this year, and is therefore proposed to be included in the bill now before us.

. . . . . .

The effect of it is simply to carry the same limitation that has been carried for years in the appropriation bills.

. . . . . .

Its purpose is to continue the appropriation situation that has existed for years, so that no bounty shall be paid for reenlistment in the military and other uniformed services."

The amendment was thereupon adopted in the Senate without recorded opposition, and was sent to conference. The House managers, in reporting the amendment to the House, described it as "Continuing during the fiscal year 1938 the suspension of the reenlistment gratuity for enlisted personnel of the Army, Navy, Marine Corps, and Coast Guard." 81 Cong. Rec. 5084. The course of the debate amply discloses that the House regarded the amendment as continuing during the fiscal year 1938 the same restriction on the enlistment allowance as the provision inserted in earlier appropriation bills.[2] It was then adopted by the House. 81 Cong. Rec. 5091.

The identical provision (except as to the dates), eventually appended to Section 402 of Public Resolution 122, was introduced as

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[2] Mr. Scott, one of the chief speakers against the amendment, stated (81 Cong. Rec. 5089): "In 1933 an amendment went into the Treasury Post Office appropriation bill taking away or suspending this reenlistment bonus. . . . The provision was continued by inserting it in the Treasury Post Office appropriation bill each year from 1933 until this year. It was in the Treasury Post Office appropriation bill that was brought into the House for consideration this year. I raised a point of order against the provision on the ground it was legislation on an appropriation bill, and that it did not come under the Holman rule. The Chairman of the Committee sustained the point of order.

"The bill went to the Senate and the suspension was not placed in the bill. The second deficiency appropriation bill passed the House and went over to the

an amendment to the Second Deficiency Appropriation Bill for the fiscal year 1938 (H. R. 10851, 75th Cong., 3d Sess.), then pending in the House. 83 Cong. Rec. 8522-8569. A point of order was made against the amendment on the ground that it was legislation in an appropriation bill; Representative Woodrum, who had charge of the amendment, admitted that the point of order was good, and the Chair sustained it. 83 Cong. Rec. 8567. The amendment was then offered in the Senate, where the Presiding Officer also sustained a point of order that it was legislation in an appropriation bill.[3] 83 Cong. Rec. 9189.

The provision was thereafter included by the conference committee as a proviso to Section 402 of H. J. Res. 679 (which later became Pub. Res. No. 122). See 83 Cong. Rec. 9512, 9677. It was passed

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Senate. This amendment was placed in there. It was clearly subject to a point of order in the Senate, but the point was not made against it.

"It now comes back to the House for a separate vote as an amendment. If we vote for this amendment it means the further suspension of the reenlistment bonus to the enlisted personnel of the Army, Navy, Marine Corps, Coast and Geodetic Survey, and Coast Guard."

Mr. Woodrum, who took charge of explaining the Conference Report to the House, stated (83 Cong. Rec. 5090): "In the first place, I wish to emphasize the fact that the language in the amendment only asks to continue this legislation for the fiscal year 1938. . . . We ask in this amendment that during the next fiscal year this reenlistment bonus be not allowed; and I may say, Mr. Speaker, this is not taking one solitary thing away from any enlisted man in the Army, Navy, or Marine Corps. He is getting exactly the pay that was promised him, and every member of the Army, Navy, and Marine Corps who enlisted during the last 3 years enlisted with the knowledge there was no reenlistment bonus going to be paid to him if he did reenlist.

. . . . . .

". . . . they know now what they knew when they reenlisted, that the time has not yet come when the Congress can offer a bonus to people working for the Government."

[3] Senator Byrnes, who had offered the amendment on behalf of the Appropriations Committee, then engaged in the following colloquy with Senator Walsh (83 Cong. Rec. 9189-9190):

MR. BYRNES. . . . I will say to the Senator from Massachusetts, in the light of the ruling of the Chair, that before the Congress adjourns I shall certainly make an effort to do something to bring about a change, so that there will not be dissatisfaction among the various services. If the bounties were all restored, millions of dollars would be involved.

MR. WALSH. Is not the situation that under existing law there is now an authorization of funds to be paid to those who reenlist in the Army, Navy, Marine Corps, and Public Health Service? Is not that the situation?

MR. BYRNES. There is authority to pay the bounty. It has not been paid for 6 years.

MR. WALSH. No funds are available.

MR. BYRNES. No funds are available.

MR. WALSH. The House Bill did seek to provide funds for reenlistment bounties in the Army. Of course, it would be highly discriminatory to have reenlistment bounties paid to those who reenlist in the Army, and none paid to those who reenlist in the other branches of the military service.

by the Senate without much debate[4] In the House, the debate disclosed that the amendment had the same purpose and effect as the provision inserted in the various appropriation bills for the preceding years. Representative Woodrum, in presenting the amendment to the House, described it as follows (83 Cong. Rec. 9677):

". . . we are providing a further inhibition for 1 year against payment of the reenlistment allowances in the military and naval services.

No reenlistment allowances have been paid for the past 5 fiscal years in any of the services, and in the absence of permanent law stopping it, the inhibition has been shuttled about in economy bills and appropriation bills at one time or another. We have not paid them for 5 years, and the latter part of this amendment now before the House is a Senate amendment which discontinues for another year the payment of the reenlistment allowances.

The opponents of the amendment, while questioning its wisdom, were in general agreement with its sponsors concerning its purpose and effect. 83 Cong. Rec. 9678-9679. The amendment was then adopted by the House. 83 Cong. Rec. 9679.

We are of opinion that Congress intended in Section 402 to suspend the enlistment allowance authorized by Section 9 during the

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Mr. Byrnes. It would certainly be discriminatory, and cause great dissatisfaction among the services.

Mr. Walsh. Is the bill now in such shape that no funds are provided for reenlistment bounties for any branch of the military service?

Mr. Byrnes. That is correct.

Mr. Walsh. What the Senator sought to do was to have Congress declare as its policy that it did not intend in the future to pay such reenlistment bounties so as to prevent possible claims; is not that true?

Mr. Byrnes. Mr. President, the sole position of the Committee is that no funds being provided, we should not leave open the opportunity for numbers of persons to file claims in the Court of Claims in behalf of men who reenlist, with the result that a year from now, or 2 years from now, some men would receive the reenlistment bounty or some part of it, after the attorneys received their fees.

Mr. Walsh. I think I understand.

[4] The debate in the Senate was as follows (83 Cong. Rec. 9512):

Mr. Walsh. Mr. President, I understand that the bill as it passed the House contained a provision for the use of funds from this appropriation for reenlistments in the Army, and no provisions were made for the use of any of the appropriation for the payment of reenlistments in the Navy, the Marine Corps, or the Coast Guard.

Mr. Adams. That is correct.

Mr. Walsh. The purpose of the amendment is to eliminate the provision for payment in case of reenlistments in the Army because it is discriminatory against the other services and civil forces, which formerly received reenlistment pay and allowances.

Mr. Adams. That is correct, and it is to open the way for statutory clearing of the whole situation.

fiscal year ending on the 30th of June, 1939. The legislative history, summarized above, discloses that Congress intended the legislation concerning the allowance during the fiscal years 1938 and 1939 as a continuation of the suspension enacted in each of the four preceding years. The adoption in the act of May 28, 1937, of different terminology might in other circumstances indicate an intent to change the object of the legislation. Compare *Brewster* v. *Gage*, 280 U. S. 327, 337; *Crawford* v. *Burke*, 195 U. S. 176, 190; *Pirie* v. *Chicago Title and Trust Co.*, 182 U. S. 438, 448. But the drawing of such an inference is a workable rule of construction, not an infallible guide to legislative intent, and cannot overcome more persuasive evidence where, as here, it exists. Compare *Boston Sand & Gravel Co.* v. *United States*, 278 U. S. 41, 48.

The respondent contends that the words of Section 402 are plain and unambiguous and that other aids to construction may not be utilized. It is sufficient answer to deny that such words when used in an appropriation bill are words of art or have a settled meaning. See *United States* v. *Perry*, 50 Fed. 743, 748 (C. C. A. 8th).[5] The very legislative materials which respondent would exclude refute his assumption. It would be anomalous to close our minds to persuasive evidence of intention on the ground that reasonable men could not differ as to the meaning of the words. Legislative materials may be without probative value, or contradictory, or ambiguous; it is true, and in such cases will not be permitted to control the customary meaning of words or overcome rules of syntax or construction found by experience to be workable; they can scarcely be deemed to be incompetent or irrelevant. See *Boston Sand & Gravel Co.* v. *United States*, *supra*, at 48. The meaning to be ascribed to an Act of Congress can only be derived from a considered weighing of every relevant aid to construction.[6] These lead to the conclusion that the judgment of the court below must be reversed.

Reversed.

The CHIEF JUSTICE, MR. JUSTICE MCREYNOLDS, MR. JUSTICE STONE and MR. JUSTICE ROBERTS are of opinion that the judgment should be affirmed on the views expressed by the Court of Claims.

[5] Compare Lucas, *Legislative Problems* (1935), pp. 421 *et seq.*, 432.

[6] "Where the mind labours to discover the design of the legislature, it seizes every thing from which aid can be derived . . . ." *United States* v. *Fisher*, 2 Cranch 358, 386.